Vol. III

TRANSCRIPT OF RECORD

(Pages 997 to 1358)

Supreme Court of the United States

OCTOBER TERM, 1953

No. 480

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED NOVEMBER 26, 1953

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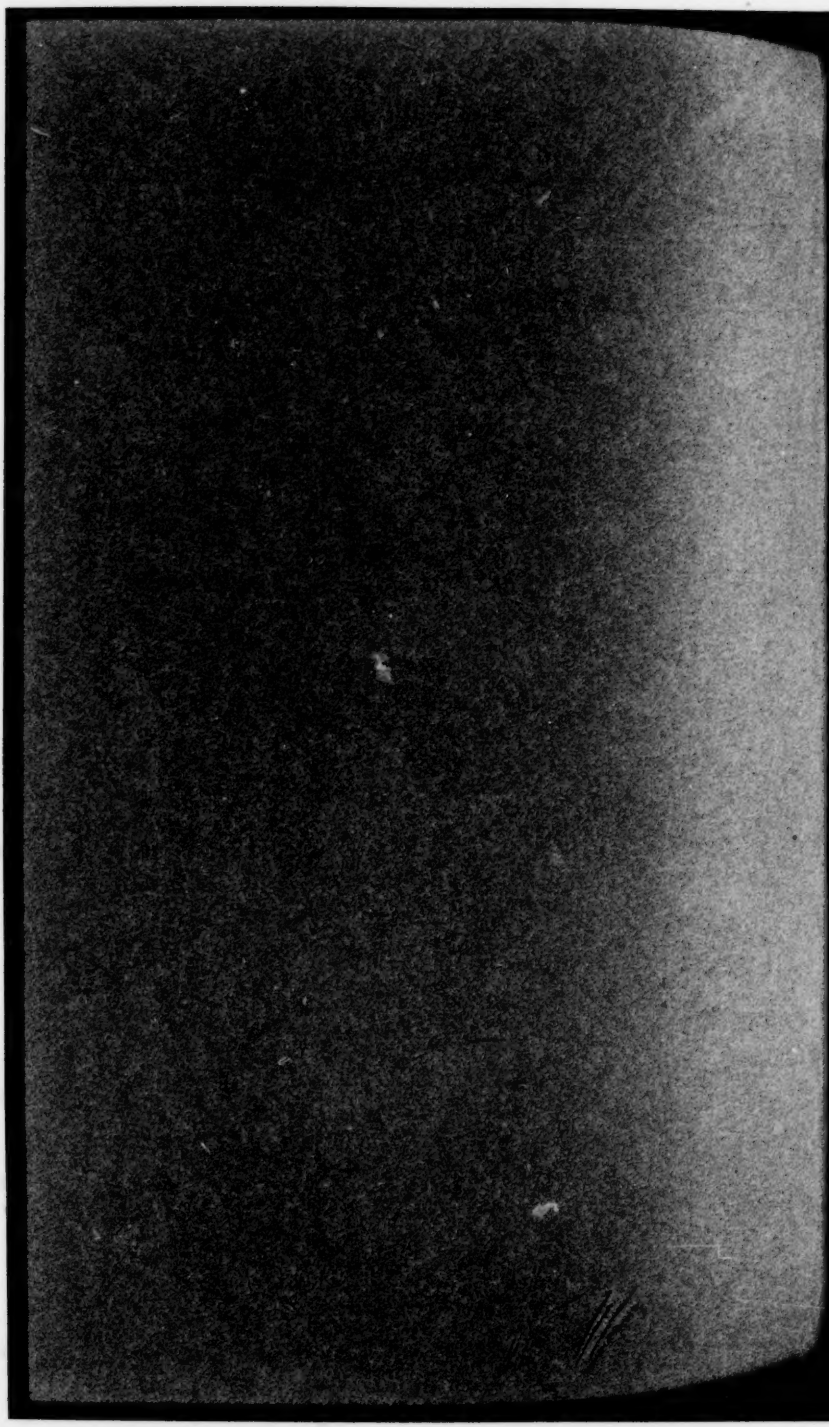

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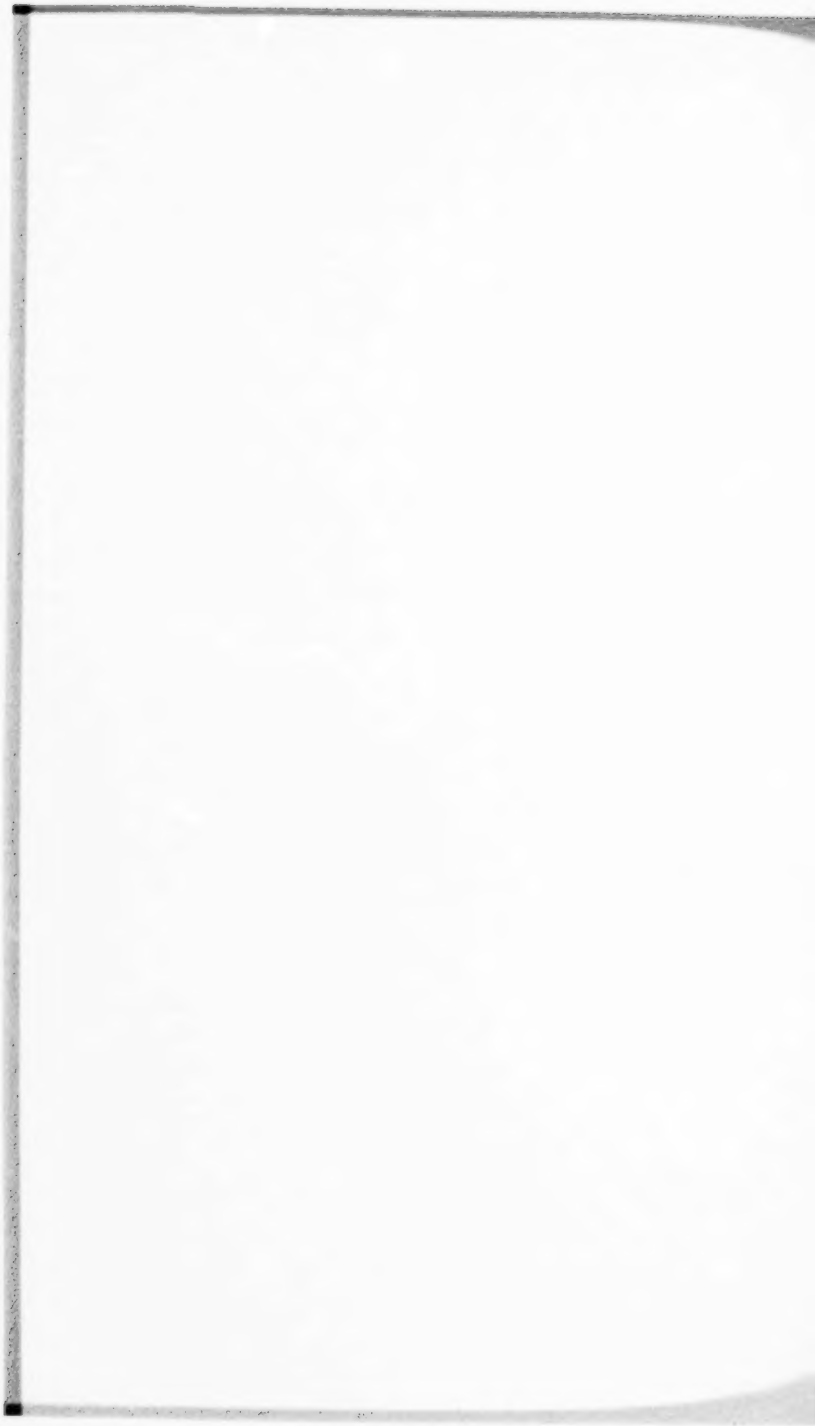

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Mr. Loos: Mr. Examiner, I should like to join in and support the statement just made by Mr. LaRoe, and in addition, I should like at this time to call attention and have appear at a conspicuous place in the record—I assume the opening of the record is a conspicuous place—a reference to the decision of the Commission in Fruits and Vegetables at Duane Street, New York, 66 ICC 135, decided back in about early 1920's. I do this because this case was not referred to in the Commission's decision in this proceed-
[fol. 916] ing, and I want to be sure that this time it will not be overlooked.

Mr. Augello: I would like to support Mr. LaRoe's statement.

Mr. Thornton: The City of New York also supports and endorses and is in accord with the comments of the three prior speakers, especially Mr. LaRoe of the Port Authority. It is our position that this is a matter of simple unloading upon the piers and evidence as far as sorting or stacking or any services beyond the act of simple unloading is immaterial and irrelevant to this proceeding.

Exam. Brown: We will assume that the rest of the protestants agree with the statements made by Mr. LaRoe, unless we hear to the contrary.

Mr. Hoffman: Mr. Examiner, I want to raise a question with respect to the scope of these proceedings. In connection with the former decision, we found that 166 automatically became applicable so as to increase the charges 30 percent. I should like to inquire at this time whether this proceeding is sufficiently comprehensive so that the 30 percent allowed in the 166 would not be applicable or would the proceedings be of such nature that we would have to secure a modification of the 166 so as to exempt any decision here from the so-called 30 percent surcharge, being realized that there was no evidence introduced in connection with 166 with respect to these specific proceedings.

Exam. Brown: What is your specific question, Mr. Hoffman?

[fol. 917] Mr. Hoffman: My question is, can a decision be rendered in this case which will exempt this tariff from the 166 30 percent surcharge?

Exam. Brown: That will be up to the Commission so far

as such action as they may wish to take on that is concerned. However, we are here on a wide open reopening. Any evidence with respect to the unloading charges, plus the 166 increases, will be pertinent here. In other words, any evidence the parties wish to offer showing the original level of the charges, plus the level of the charges which include ex parte 166, would be pertinent evidence here. If the Commission would wish to make any specific finding in that respect, that is up to them. I will receive any evidence here pertaining to 166 as it relates to this case.

Mr. Wells: Mr. Examiner, I take it from the statement just made that the points raised in the petitions for reconsideration filed before the Commission are certainly before the Commission on the rehearing for reconsideration.

Exam. Brown: If pertinent to this proceeding, that is correct. The Commission had no strings on its order. The case is reopen for rehearing.

Have the Respondents any statement to make?

Mr. Smith: No, sir.

Exam. Brown: You may proceed, Mr. LaRoe.

Mr. LaRoe: Off the record, is my understanding correct, [fol. 918] Mr. Examiner, that the next exhibit is No. 73?

Exam. Brown: That is right, sir. We will go off the record for the purpose of numbering, identifying and distributing the exhibits.

(Off the record)

Exam. Brown: On the record. Let the record show that the exhibits for this witness have been numbered, identified and distributed off the record. They are exhibits No. 73 to 96, inclusive. All right, Mr. LaRoe, will you proceed, please?

Edward K. Laux was sworn and testified as follows:

Direct examination.

By Mr. LaRoe:

Q. Will you give your name, position and transportation experience?

A. My name is Edward K. Laux. I am employed by The

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Port of New York Authority at its home office, 111 Eighth Avenue, New York 11, New York, in the capacity of traffic manager.

My experience in transportation and traffic matters covers a span of 38 years, most of which was in official traffic capacities with coastwise lines. I have been in the employ of the Port of New York Authority in my present position for approximately 5 years.

Q. For whom do you appear as a witness?

A. On behalf of the Port of New York Authority.

Q. Explain the Port Authority's status.

[fol. 919] A. The Port of New York Authority is a municipal corporate instrumentality created by compact between the states of New York and New Jersey with the approval of the Congress of the United States and charged with the duty of protecting, promoting and developing the commerce of the Port of New York District. This mandate falls directly within the provisions of the national transportation policy which states its purpose to be, in part, "to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof".

Q. Did the Port Authority actively participate in the original proceeding?

A. Yes, in the original proceeding we appeared as a protestant and testimony against the protested unloading charges was introduced by a Port Authority witness, Philip G. Kraemer, our assistant traffic manager. The Port Authority is also among the petitioners that requested the reopening and rehearing in this proceeding by the Commission.

Q. The Port Authority's interests and concern with regard to the charges now being applied by the respondents is just [fol. 920] as great as ever, isn't it?

A. Yes, and we hope that through this rehearing we shall be able to show that the findings and orders under which

the charges were permitted to become effective were based on an erroneous conception of the respondents' obligations under the Interstate Commerce Act to make delivery to the consignees and failure to distinguish this basic delivery service from other services performed by the railroad which are merely incidental.

Q. Are you familiar with the issues in this proceeding and with the respondents' practices in delivering freight at or through the pier stations?

A. Yes, I am familiar with the issues and the carriers practices in offering delivery of carload freight at pier stations. I can say that I have observed railroad operations of deliveries along the North River or Hudson River pier stations for over 30 years. Many years ago, when employed by the Old Dominion Steamship Company, predecessor of the Eastern Steamship Lines, I took part in the checking and delivering operations of large quantities of all kinds of freight including Irish potatoes, spinach, kale and other varieties of vegetables originating in Virginia, southern and western points. This traffic was competitive with the railroads and because of this competition it was necessary to be familiar with the system and practices that [fol. 921] the railroads followed at the pier stations. The produce business of the coastwise lines was diverted to the Pennsylvania Railroad when that railroad rehabilitated its pier stations and established the produce terminal at Piers 27 and 28. The Old Dominion Line had its delivery facilities at Pier 26, North River, contiguous to those of the Pennsylvania.

Q. Has the Port Authority made a study of the railroad practices at their pier stations at which unloading and delivery of fresh fruits and vegetables are accomplished?

A. Yes, we have, in connection with the Port Authority's proposal "For Development of Municipally Owned Waterfront and Piers of New York City", and reports to Honorable William O'Dwyer, Mayor of the City of New York. Another Port Authority witness will introduce evidence in connection with these studies, and other data with regard to effect of the present protested unloading charges. These charges have temporarily and in many cases permanently, diverted fruit and vegetable traffic in substantial quantities

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to railroad facilities where consignees are accorded access to the door of the freight cars for delivery of contents and thus the payment of the railroad protested charges are avoided.

Q. Was the evidence that you are now about to give previously submitted by a Port Authority witness?

A. No. Our evidence in the original proceedings was very limited. We believed that the facts surrounding the [fol. 922] station delivery were so obviously clear, that rail cars on car floats alongside of pier stations were not accessible to consignees for direct unloading from car door to motor vehicle. We did not believe it necessary to include evidence with regard to the overall pier station delivery practices. However, now that the Commission's further order reopened the proceeding for rehearing, our presentation will be more comprehensive.

Q. Will you proceed with your evidence?

A. First, I believe it is again necessary to emphasize that the railroad pier stations at which the charges apply, as per my exhibit No. 73, consisting of three pages which I now desire to introduce, have no on-shore track facilities. Cars for delivery at these railroad pier stations are moved by the carriers from their rail heads on the Jersey shore by car floats. The cars remain on the floats and the contents of the cars are not accessible to the consignee or owner for unloading. It should be noted from my exhibit, which is a reproduction of the carriers' tariff Rule A-204 and Items shown in the exhibit as published in Agent Boin's ICC A-881, that the carriers indicate that the fruits and vegetables, cantaloupes and melons would be unloaded by the carriers only at the stations shown in Note of the Rule. These stations under Note A are all pier stations with the exception of the Bronx Terminal Market.

The carriers do not give the consignees or owners the [fol. 923] option to perform their own unloading. The freight rates on fruits and vegetables, cantaloupes and melons are published from western and southern origins to New York, N. Y., thus indicating transportation service to the New York stations by the railroads.

However, according to the provisions of Rule A-204 as reproduced in my exhibit, it can be seen that the line-haul

rate is circumvented in that respondents now segregate the service, using the old rate to cover the service up to the placing of the car at the pier, where it is not accessible to the consignee, and adding a separate charge for the delivery service, although delivery was always included in the old rates. In other words, the consignee now pays for the delivery twice. Stated differently, the consignee or owner does not get his car on arrival at New York unless unloading charges are paid in addition to the line-haul rates. The nature and incidents of the pier station unloading here in issue is beyond a doubt a service inextricably bound up with the line-haul service and rate.

Q. Have the railroads at New York always treated the unloading as a terminal service, as a part of transportation covered by the freight rates?

A. Yes, as long as I can recall in my 38 years' of experience. Going back in history with regard to the Pennsylvania Railroad, it entered Jersey City and New York [fol. 924] through acquisition of the United Railroad of New Jersey November 30, 1871, and thereafter afforded producers of fresh fruits and vegetables west of the Hudson River access to the New York market via ferries.

As far as that railroad was concerned, it was not until 1882 that pier space along the east side of the North River could be leased from the City of New York for exclusive use in connection with the handling of freight traffic including perishable commodities. The first lease arranged for covered two piers, numbers 27 and 28, which were open piers until August, 1884.

From the beginning of operations of the two piers diversified perishable food products in small quantities were offered for a movement to them without any requirements, however, to display for sale.

Perishable traffic from the south which was moved in boats and delivered to the New York trade places or markets between 1850 and 1882 included lettuce, radishes, strawberries, potatoes, watermelons, etc. The pier development was designed to secure that traffic. General business including perishable commodities during the next few years was such as to make it desirable for the Pennsylvania leasing another public pier from the City of New York to be

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used exclusively for the concentration and handling of other perishable products for New York deliveries.

[fol. 925] The display feature of the market arrangement pertaining to perishables and which had been agitated intermittently also assumed a quite definite status, the subsequent development involving delivery and sale of perishable products over North River piers being indicated by records showing that the volume of such traffic representing a few hundred carloads annually during the early days had increased to a level annually representing approximately 38,000 carloads, an annual average over the 6 years which ended in 1926 of 35,612 carloads.

Pier 29 was partially heated in 1892 and completely heated in 1907 and was used almost exclusively for perishable traffic until the demand exceeded its capacity and then pier 28 was completely heated and assigned for use to take care of the overflow of pier 29.

The Pennsylvania Railroad has since the year 1882 endeavored to meet the requirements of the produce industry, the facilities having been coordinated with train schedules, yard and floating operations, display and auction arrangements.

It was in 1927 that the Pennsylvania Railroad rehabilitated their pier facilities with additions to satisfy the trade demand for deliveries at pier stations on Manhattan Island with regard to fresh fruits and vegetables from the far west.

I shall now introduce a series of 12 exhibits which are reproductions from the carriers' freight tariff, Agent Boin's ICC A-881——

[fol. 926] Exam. Brown: Before you take up your next exhibits, I wish you would turn to your Exhibit 73.

Mr. LaRoe: Are you going to testify to that now or have you concluded with that?

The Witness: I have finished with 73.

Exam. Brown: Well, will you turn to page 3 and explain the abbreviations for the benefit of the record, the abbreviation at the top, for example: "Piers 10 and 11, N. R."

The Witness: N. R.? The abbreviations N. R. stand for North River. H. R. shown under Erie stands for Hudson River. B. & O. stands for Baltimore and Ohio.

Exam. Brown: Well, that is understandable, but "N.Y.C. (W.S.) that would be West Shore?

The Witness: Yes. N.Y.C. stands for New York Central.

Exam. Brown: And N.Y.O. & W. for New York Ontario & Western?

The Witness: That is correct.

Exam. Brown: I think that is enough on that. I think it might be well for you to state for the record that these are the present basis of charges increased by 30 percent over the old charges, is that right?

The Witness: Yes, these are the current charges, which includes all of the entries up to 166, ex parte 166. These unloading charges were not subject to the increases under ex parte 168.

[fol. 927] Mr. Miller: Mr. Laux, these charges are not actually published the way they appear on this exhibit, are they?

The Witness: Yes, sir.

By Mr. LaRoe:

Q. When you set up the 166, did you mean up to and including 166?

A. Yes, sir.

Q. So that this is an up-to-date exhibit and current as of today, because 168 did not increase them further; in other words, these are the present charges?

A. These are the present charges; that is correct.

Exam. Brown: And for convenient comparison, you might state that the former charge on citrus fruits, that is, the charge which was originally proposed, was $1.50 per net ton, is that correct?

The Witness: On some commodities, that is correct.

Exam. Brown: Citrus fruits I am referring to.

The Witness: On citrus fruit, that is correct.

Exam. Brown: And 30 percent of $1.50 would be $1.95; that is, added to the $1.50 would be $1.95; is that correct?

The Witness: That is correct.

Exam. Brown: And the same thing is true of other charges in here?

The Witness: That is correct.

Exam. Brown: In other words, for cantaloupes and

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melons the former charge was $2. 30 percent of that is [fol. 928] 60 cents, which added to the $2 makes $2.60?

The Witness: That is correct, sir.

Exam. Brown: And that is the same through your Exhibit No. 73?

The Witness: That is right, sir.

Mr. Hodkinson: That is not quite right.

Exam. Brown: Former proposed charge. I used "proposed" when I first referred to it.

Mr. Hodkinson: The originally published charge never took effect. When the effective date of the Commission's audit was reached, 166 was operative so that instead of $1.50, we got $1.95; instead of $2, we got $2.60.

Exam. Brown: When I first referred to this, I said, "The original proposed charge." I think the record will show that. My understanding is in agreement with Mr. Hodkinson; when the charges went into effect, they carried the 166 increases.

Mr. Hodkinson: That is correct.

Exam. Brown: But, as first published, it did not carry the increases applied against them.

Mr. Hodkinson: That is right.

Exam. Brown: All right, sir.

A. (Continuing) I shall now introduce a series of 12 exhibits which are reproductions from the carriers' freight tariff, Agent Boin's ICC A-881, describing the railroad pier stations. No. 74 two pages, No. 75 one page, No. 76 two [fol. 929] pages, No. 77 one page, No. 78 one page, No. 79 one page, No. 80 one page, No. 81 one page, No. 82 one page, No. 83 one page, No. 84 one page, No. 85 one page. It will be noticed from my exhibit No. 74 that Pier 22 of the B. & O. is open for receipt and delivery of carload freight in packages as well as fresh fruits and vegetables.

Furthermore, that all freight is unloaded from or loaded into cars on car floats.

The same may be said with regard to the Central Railroad of New Jersey, Piers 10 and 11, North River, my exhibit No. 75; likewise the D. L. & W. Piers 13, 41 and 68, my exhibit Nos. 76, 77, 78; Erie Railroad Piers 19, 20, 21, 48 and 67, my exhibit No. 79; Lehigh Valley Piers 8, 38 and 66, my exhibit Nos. 80, 81, 82; New York Central Barclay St.

Station, my exhibit No. 83. The Pennsylvania Railroad Produce Terminal Piers 27 and 28, my exhibit No. 84, is the only pier station that is limited to the receipt and delivery of perishables, however Penn Station Desbrosses Pier 29 N. R. my exhibit No. 85 is typical to the other carriers stations as portrayed in my previous exhibits. Referring back to my exhibit No. 84 Penn stations Produce Terminal, even there it should be noted that this station is opened to handle butter, butter substitutes, cheese, eggs, dressed poultry and/or game, fresh meats, sausage, fish, clams, oysters, flower bulbs, and raw silk.

These commodities are unloaded by the carriers from cars [fol. 930] on car floats alongside of the piers to the floor of the pier stations and no charge is assessed for that service. At all of the other railroad pier stations, which are not limited for the handling of perishables, all types of freight are unloaded by the carriers from cars on car floats alongside of piers to the floor of the pier stations where such freight is made accessible to consignee.

Q. Let me interrupt you there, Mr. Laux, because this we regard as an important point. If you will look near the top of your exhibit 74, about the fourth paragraph, under the heading "deliveries," it says: "This station is open for receipt and delivery of carload freight in packages, including fresh fruits" and so on.

Now, do I understand your testimony to indicate that the railroads, other than the Pennsylvania Railroad, will deliver any freight at all, any carload freight at all, in packages to the pier without an extra charge?

A. That is correct. The exception with regard to the Pennsylvania covers only those two stations, Pier 27 and 28.

Q. I am not talking about the Pennsylvania in this question. I am talking about the railroads other than the Pennsylvania.

A. That is correct, sir.

Q. Do I understand that there is no carload freight at all in packages that this tariff is not applicable to? In other words, it covers everything?

[fol. 931] A. It covers everything, sir.

Q. And it is only the Pennsylvania that makes certain exceptions, exclusions?

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A. That's right.

Q. And that goes far beyond the fruits and vegetables?

A. Yes, sir, they do.

Q. All right; go ahead.

A. (Continuing) The protested charges with regard to application at the various pier stations are prejudicial and discriminatory. We think it is also important for the Commission to note from my exhibit No. 74, which I have just introduced, that at B. & O. pier 22 station and my exhibits Nos. 76, 77, 78, D. D. & W. Piers 13, 41 and 68, commodities in mixed carloads which ordinarily move at transportation rates under Rule 10 of the consolidated freight classification are received and delivered. This type of freight is miscellaneous in character and is ordinarily handled by the railroads in behalf of freight forwarders subject to Part IV of the Interstate Commerce Act.

This freight is loaded or unloaded to and from cars on car floats to the floor of the pier stations.

These provisions also contain the marriage clause whereby two different station locations will be treated as one station.

This exhibit further indicates that the B. & O. and Erie handle dairy products, dressed poultry, etc., which are [fol. 932] highly perishable commodities. However, here again no charge is assessed for unloading from cars to pier station floors.

Q. Do the respondent carriers publish a specific rule providing for the loading and unloading of carload freight at the New York stations?

A. Yes, and in that connection I would now like to introduce my exhibit No. 86, consisting of one page, which is an excerpt from Agent Boin's ICC A-881, Item 4645B, Supplement No. 20. It will be noted from this excerpt that freight in carloads, other than bulk freight, carried at carload rates, received or delivered at stations in Note 19 through carriers' warehouses or sheds or over carriers' piers or platforms, will be loaded into or unloaded from car by carriers.

This item is silent with respect to the application of charges under the carriers' tariff rule A-204, my exhibit No. 73.

Fresh fruits and vegetables may be received at the various

stations for westbound movement and that eastbound movements of dried fruit and various kinds of dairy products, poultry, etc., and also Rule 10 mixed carloads, are loaded and unloaded by the carriers without added charge shows again that the protested charges are unjust and unreasonable.

Q. You made reference to stations in Note 19. Can you explain what those stations are?

A. Yes, through my next exhibit No. 87, consisting of [fol. 933] two pages, which is a reproduction of the carriers' tariff Note 19 published in Agent Boin's ICC A-881. Among the stations in Note 19 are listed the stations at which the protested charges are assessed. All the other stations shown for the most part are pier stations.

Q. Where the carriers unload cars without extra charge to the floors of the pier stations, do they customarily tally such freight?

A. Yes. The freight is ordinarily delivered according to delivery orders presented by consignee's authorized truckman. However, in further evidence, I submit my exhibit No. 88——

Exam. Brown: Before you take up 88, explain the N.Y.C. (E). What does "E" mean? Does that mean East River?

The Witness: Wait a minute—that is on 87?

Exam. Brown: 87.

The Witness: No. N. Y. C. (E) stands for New York Central Eastern Lines.

Exam. Brown: That is to be distinguished from the Eastern Shore, is that the idea?

The Witness: That is right.

Exam. Brown: West Shore.

The Witness: West Shore.

By Mr. LaRoe:

Q. I do not think you finished that last sentence.

A. (Continuing) Yes. The freight is ordinarily de- [fol. 934] livered according to delivery orders presented by consignee's authorized truckman. However, in further evidence, I submit my exhibit No. 88, consisting of one page, which is also an excerpt of Agent Boin's ICC A-881,

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Rule M-60, and applies for account of the Pennsylvania Railroad.

It shall be noted from my exhibit that tallying is performed without extra charge. The railroad undertakes to keep record of the number of packages with marks and description of freight loaded to each truck leaving the carriers' premises.

Q. Do the carriers have any provisions under which motor vehicles of shipper or consignee are loaded or unloaded from or to the pier station or platform floors?

A. Yes, and in evidence I introduce my next exhibits Nos. 89, consisting of two pages, and 90, consisting of one page, which are reproductions of the carriers' tariff Rules A-197 and A-198, Agent Boin's ICC A-881.

The stations at which the service is performed include those pier stations at which the protested charges apply. It shall be noted from exhibit No. 89 that Note B under Rule A-197 prohibits application of the charge on fruits and vegetables. However, with regard to Rule A-198, my exhibit No. 90, applying for account of Pennsylvania Railroad, that carrier holds itself out to unload cars on team tracks to vehicles at its 37th St. Station, Henderson St. Station and Manhattan Produce Yard at a nominal charge of 6¢ per 100 lbs.

[fol. 935] At the stations shown in my exhibit No. R the car doors are accessible to vehicles and freight handled through such facilities is not subject to the protested charges.

The carriers offer a further service of loading the vehicle with the freight direct from the cars on the team tracks. This arrangement is a preference and advantage which the carrier disallows at the pier stations at which the protested charges apply.

Q. Are there any other provisions the carriers have under which unloading and loading are performed by the carriers under line haul charges and without extra charge?

A. Yes. I now offer in evidence my exhibit No. 91, consisting of one page, which is a reproduction of Item 4635, Rule A-200, Agent Boin's ICC A-881, which indicates that unloading and loading is performed on carload freight received directly from or delivered directly to water equip-

ment, within which category may be included lighters and other marine equipment.

I also offer exhibit No. 92, consisting of one page, which is a reproduction of Item 2525, Rule A-10, of Agent Boin's ICC A-881. It shall be noted that on export, import, intercoastal and coastwise traffic, loading and unloading is performed without charge.

Q. In your opinion, would perishables such as fruits and vegetables move export, intercoastal or coastwise?

A. Yes. During certain seasons apples and potatoes [fol. 936] move from the Port of New York by water.

In further evidence, however, I shall introduce my exhibit No. 93, consisting of one page, which is an excerpt of Rule A-10, Item 2520, Agent Boin's ICC A-881, which it shall be noted provides for the loading of grapes, pears, plums or prunes for export.

Q. Do you know of any other conditions under which the carriers hold themselves out to load and unload carload freight within the port district without added charge over the line haul rates?

A. Yes. I shall not introduce my exhibit No. 94, consisting of one page, which is an excerpt from Agent Boin's tariff ICC A-881, Rule A-155 therein. This shows that the B. & O., Erie and Pennsylvania Railroads are willing to load and unload cars in lieu of lighterage service, without extra charge.

Q. Perhaps I should ask you there, what does that mean, "in lieu of lighterage"? There is a very extensive lighterage district here, is there not, in which lighterage freight is delivered at the line haul rates throughout what is known as the lighterage district?

A. Yes, there is.

Q. And the railroads sometimes, when the lighterage service is not performed, have truck deliveries or other deliveries in lieu of lighterage, is that right?

A. That is correct. At their option and convenience they [fol. 937] perform the service sometimes with other motor vehicles.

Q. And when they do that, they load and unload freight?

A. That is correct.

Q. In your opinion, are the circumstances and conditions

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affecting the unloading of these commodities as referred to in your exhibits similar in material respect to those affecting the unloading of fresh fruits and vegetables?

A. Definitely, yes. The best illustration is with regard to poultry, dairy products, eggs.

Q. Why?

A. I should now like to introduce my exhibit No. 95, consisting of one page, which again is a reproduction from Agent Boin's ICC A-881, Rule M-67, Supplement No. 20, Item 7163. This rule indicates that the carriers unload at the line haul rates butter, eggs, cheese, dressed poultry, etc. Furthermore, where sorting is required, that additional service is performed by the carriers and a charge is assessed therefor.

Q. What significance does this have with relation to the protested charges?

A. Under Rule M-65, Agent Boin's ICC A-881, which is reproduced in the exhibit I am about to offer as No. 96, the carriers provide for a charge for a sorting service according to grades, kinds, marks or brands. The charge assessed appears to be a very nominal one compared to the charge for similar service assessed on dairy products.

[fol. 938] Exam. Brown: Mr. LaRoe, I thought you wanted to keep out of the record the sorting service charges?

Mr. LaRoe: As I tried to say, Mr. Examiner, I may be guilty of some inconsistency there, but I do not see how we can draw a clear line of distinction between the simple unloading service on the one hand and the accessorial services on the other without stating what the latter are. I do not see how we can keep out of the record any reference to them. In fact, as the Examiner has already reminded us, the record is already full of them. So that we realize that we have to draw that line of distinction between simple unloading on the one hand, and sorting, stacking, auction and other phases on the other hand.

Our point is that the latter should not be regarded as in issue in the proceeding.

Exam. Brown: I think every party here agrees that those particular services are not in issue. Is that right, Mr. Smith?

Mr. Smith: That is right.

Exam. Brown: We are only considering the unloading charges as such from an issue standpoint, right?

Mr. Smith: That is correct.

Mr. LaRoe: We go one step beyond the issue standpoint, however, Mr. Examiner, to make our position entirely clear. In addition to arguing that these accessorial charges are not in issue, we make the further contention that they have [fol. 939] nothing whatsoever to do with transportation. In other words, that the transportation ends with simple delivery on the pier and that if the goods are displayed, for example, or sorted according to grade or kind, that is a commercial thing that has nothing to do with transportation. The railroad service ends, we contend—the transportation service ends when the freight is put on the floor of the pier in simple delivery.

By Mr. LaRoe:

Q. Will you go ahead, Mr. Laux?

A. Yes. Then we have certain fruits and vegetables that are for export or for water movement beyond the port and such freight is unloaded without a charge. Some of the commodities are similar particularly when referring to potatoes, apples, grapes, plums and pears.

Q. Do you contend that the rail carriers are not entitled to compensation for the delivery?

A. No. Our contention is that the line-haul rates includes simple delivery, and by simple delivery we mean the placing of the freight on the floor of the pier.

However, we feel that if a car is offered to the carriers with diagram loading of contents, such a car should be made available and accessible to the consignees for unloading to pier station floors with the contents of the car placed on the pier station floor in accordance with the diagram of the car. If the contents of the car are not diagram loaded by the [fol. 940] shipper, such freight should be unloaded from the car to the floor of the pier and stacked promiscuously.

Where it appears necessary, in the interest of auction purpose or for negotiating sales in the pier terminal areas, that the contents of cars be sorted according to grades, sizes, kinds, brands, marks or other designations or stacked in some special order for inspection before sale, these serv-

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ices undoubtedly are of worthwhile benefit to the trade, consignees, shippers or owners. Such services are beyond the carriers' transportation function. Therefore, the cost thereof should be in addition to the transportation charges of the carriers. Stated differently, the common carriers should make the car accessible for delivery at the line haul charges. However, where the terminal facilities or piers are offered for use as a sales mart, an adequate charge would be reasonable to compensate the carriers for making their premises available.

Q. Have you any ideas as to what charge should be assessed where service and facilities of the carriers are in the interests of sales?

A. Nothing definite, but it is perhaps a fact that the charges provided under the carriers' Rule M-65, my exhibit No. 96, are inadequate and may be a more compensatory charge for the carriers would be the charge of 4¾ cents per 100 pounds, such as provided already today in connection with the dairy products under Rule M-67, my exhibit No. 95.

[fol. 941] Q. Is it your view that the unloading of freight to a platform accessible to the consignee is required as part of the line-haul service?

A. Yes. Where floating is employed in lieu of rail switching and cars are delivered on floats alongside of piers.

Q. Is it also your position that this privilege applies to fresh fruits and vegetables as well as any other commodity?

A. To do otherwise would be unjust, unreasonable, prejudicial and discriminatory, in the face of the carriers' practices in performing without added charges unloading and loading services for every other commodity, including fruits and vegetables, when for export or imported, coastwise and intercoastal. The freight rates are published for application to New York, N. Y., and it is the carriers' duty to make accessible to consignee or owners cars consigned to New York at the carriers lawfully provided and advertised New York pier stations and at which other freight is handled between cars and the carriers' pier station floor or platform, without an added charge.

Traditionally the practice of unloading at the pier stations has been in effect for over half a century and where

the terminal service has always been treated by the carriers as part of the transportation service covered by the freight rate and regularly performed by the respondents over such a long period the carriers should not now be permitted to segregate that service and assign to it a separate charge without taking into consideration the entire through serv-
[fol. 942] ice of which it forms a part and the consideraton received for such through service.

The carriers recognize that by reason of physical conditions the economy of operation, inadequacy of team tracks and obligation to accomplish delivery of property at the pier stations to unloading the freight to the pier floors making some accessible to the consignee for the reason that this is and has been a practice with regard to all types and character of freight, the fresh fruits and vegetables now being the only exception.

Q. I confess a little confusion on my own part with respect to the first part of your answer up there. You say without extra charge for the unloading service for every other commodity, including fruits and vegetables when for export or imported, coastwise or intercoastal. It was my understanding from your previous testimony that all carload freight in packages, whether for local delivery or for coastwise or intercoastal or export or import is unloaded on these piers without charge and that fruits and vegetables are the only exception, except possibly as to the Pennsylvania Railroad.

A. That is correct.

Q. Well then, you did not intend to give the impression here that this free unloading for all other commodities is limited to the coastwise or water movement. It applies to local movement.

[fol. 943] A. Yes, sir.

Mr. Wells: Pardon me, may I ask for further clarification there, Mr. Laux?

The Witness: Yes.

By Mr. Wells:

Q. Mr. Laux, on imported fruits and vegetables, isn't there an unloading on the same piers without any additional charge to the consignee, and doesn't the records you have

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there, exported or imported, refer primarily to your fruits and vegetables?

A. Yes, sir. It refers to the fruits and vegetables that are moved either outbound by water beyond the rail carriers' facilities or inbound by water to the rail carriers' facilities.

By Mr LaRoe:

Q. That is to say, if some fruit comes in from Italy or any other place abroad, it will be loaded into the cars without charge, but if it is Florida fruit, there is a charge for unloading?

A. That is right.

Mr. LaRoe: Does that cover your point?

Mr. Wells: Yes.

By Mr. LaRoe:

Q. Does that complete your testimony?

A. It does, sir.

Mr. LaRoe: Witness may be cross examined.

Exam. Brown: Before we proceed with the cross examination, I think this should be straightened out in the record. During the course of your testimony, you stated that a [fol. 944] car should be made available and accessible to the consignees for unloading to pier station floors with the contents of the car placed on the pier station floor in accordance with the diagram of the car.

The Witness: That is right.

Exam. Brown: It might be inferred, perhaps, from that statement that you meant that the contents of the car should be made available and accessible to the consignees so that they might unload themselves. That was not intended?

The Witness: No, that was not intended.

By Mr. LaRoe:

Q. Will you explain what you did mean there?

A. My testimony ran along the line that if a car arrives at one of these pier stations with freight in it, that was loaded by the shipper according to a diagram, that the carrier in making the contents of that car available to the

owner on the pier floor should be responsible for placing the contents of that car on the pier floor in accordance with the diagram covering the unloading of the car by the shipper.

Exam. Brown: Do you wish to offer your exhibits, Mr. LaRoe?

Mr. LaRoe: If you please, sir.

Exam. Brown: Exhibits 73 to 96, inclusive. Any objection?

(No response)

Exam. Brown: They are received in evidence.

(Protestants' Exhibits 73 to 96, inc. witness Laux, received in evidence.)

[fol. 945] Exam. Brown: Are there any further questions coming under the head of direct examination of this witness?

Mr. Wells: May I ask one additional question about the query I put a moment ago?

Exam. Brown: Proceed.

By Mr. Wells:

Q. Actually, Mr. Laux, do you know whether there is citrus fruit and possibly tomatoes from Cuba and the Isle of Pines and grapefruit from Puerto Rico that is actually unloaded on to piers that are involved in this proceeding, but without any charge whatever to consignee?

A. Well, I understand that there are imports of those commodities from those countries, and that those commodities are loaded by the railroads without any extra charge, but whether the loading is performed at these particular pier stations, I could not say. I am not sure about that.

Q. This question is unloading, unloading on to the pier floor.

Exam. Brown: The witness answered with respect to loading. I do not think he meant loading. I think he meant unloading. What is the situation? Did you mean to answer from an unloading standpoint?

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Mr. LaRoe: Let us get the question clear.

The Witness: I thought Mr. Wells was talking about imports.

By Mr. Wells:

Q. I am speaking, for example, about a shipment of grapefruit from Puerto Rico, that might come from Puerto Rico by ship into the Port of New York and is placed on [fol. 946] a lighter and brought alongside one of these particular piers and unloaded on to the pier floor by railway labor, and in that case, there is no unloading charge on to the pier payable by the consignee.

Mr. Donadio: Ask him if there is any such practice, if anything like you suggest in your question takes places.

By Mr. Wells:

Q. My question is, is that true?

A. Well, on imported fruits and vegetables, the carriers performed loading without charge, loading to cars.

Q. Unloading on the imports coming in and delivered on the pier?

A. From the lighter. Well, I am not clear as to that. I do not think I understand your unloading part of the question.

Exam. Brown: We will have a short recess and clear it up after recess, at which time we will also take up the cross examination.

(A short recess was taken)

(Off the record)

By Mr. Wells:

Q. Mr. Laux, in an effort to clarify the question a moment ago, do not the unloading charges on fruits and vegetables at the North River Pier referred to in your exhibits and testimony apply only on fruits and vegetables delivered by rail?

A. That is right.

Q. And the tariffs in question provide that those unload- [fol. 947] ing charges will not be assessed against imported

fruits and vegetables that may be unloaded and delivered to the same pier?

A. That is correct where the railroad participates in that movement, and it is also correct where a railroad pier is used by a steamship line that brings in fruit and places the fruit on the railroad premises for delivery.

Q. In other words, if there is not an antecedent rail movement of the fruits and vegetables, although it is unloaded on this pier, the consignee does not pay this particular unloading charge?

A. That is correct. That works that way. He would not pay that charge.

Exam. Brown: While we are on that subject, do you know whether or not there are actual unloadings under that term at the present time?

The Witness: You mean on this water freight?

Exam. Brown: That is right.

The Witness: Well, on this foreign traffic there has been occasions where some of the railroad piers have been used, particularly Erie, I believe.

Exam. Brown: My question has reference to the present time. In the past I think it probably would be conceded that there has been none.

The Witness: Frankly, I could not say, Mr. Examiner, as to the present time.

[fol. 948] Exam. Brown: Tariff provisions are available if there is such an unloading?

The Witness: That is correct.

Exam. Brown: Cross examine.

Mr. Smith: I have no questions, Mr. Examiner.

Cross-examination.

By Mr. Miller:

Q. Mr. Laux, I understood you to say in your testimony that at one time, at least, watermelons were unloaded at these pier stations; is that correct nowadays?

A. I am not sure whether watermelons are still unloaded or not. There was a time that they did bring the watermelons over to New York piers. I understand, too, that the carriers find it more convenient to keep the watermelons

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on the Jersey side and delivery it to trucks and perhaps make some allowances from ferryages.

Exam. Brown: At the last hearing, it was understood unanimously that watermelons were all unloaded on the Jersey side at that time. You do not know whether there has been any change in that situation?

The Witness: No, I do not.

By Mr. Miller:

Q. Can you explain to me how these charges are prejudicial to the Port of New York Authority, if you know?

A. Well, they are prejudicial because it sets up a charge in the port district which is not applicable in other parts [fol. 949] of the district. For instance, these charges would be assessed on freight at the Manhattan piers and cars are made available on the Jersey side where deliveries could be accomplished by the receiver having access to the car door.

I should like to mention, too—you mentioned watermelons, my testimony in regard to watermelons. I think I mentioned melons and not watermelons, which covers a variety.

Mr. LaRoe: Perhaps counsel should really answer that question. Mr. Miller, we do not contend that the Port Authority, as an agency, is prejudiced. Our contention is that we have a duty under the statute to see that the port is developed as a whole, and without discrimination, and that this hurts one of the parts of the port as against another and some shippers against others, and some traffic as against others. The port authority, however, does not sell watermelons.

By Mr. Miller:

Q. Can you tell me whether the Port Authority would be opposed to a reduction in the level of charges at Philadelphia as compared with those at New York?

A. Which charge are you talking about?

Q. These charges.

A. Unloading charges? Our position is simply this—I

think I made it plain in my testimony—we want the charge abolished entirely. We are not concerned directly.

Q. I understand that, Mr. Laux. My question is, would you be opposed or in favor of a difference in charges for unloading this traffic at Philadelphia as against New York.

[fol. 950] Mr. LaRoe: To the disadvantage of New York.

By Mr. Miller:

Q. Well, assuming that the charges would be lower at Philadelphia than at New York.

A. Well, my answer would be, we are opposed to any kind of a charge, whether it is lower or higher. If there is a charge, we are against it.

Q. Assuming there is going to be a charge at both places, would you be opposed to or in favor of the publication of lower charges at Philadelphia?

Mr. LaRoe: I do not think we should be called upon to answer that, Mr. Examiner, because it is not in issue. I want to be frank with counsel; in similar cases in the past we have taken the position of opposition to anything that would operate to the disadvantage of New York in that manner, and I should think we probably would take that same position if an attempt were made to favor Philadelphia. But that issue is not here.

Mr. Miller: The issue is raised, Mr. Examiner, by a number of the petitions for reopening and reconsideration.

Exam. Brown: That is correct. And the question is what is the position of the Port of New York Authority. I think that is a question you might ask of counsel.

Mr. Miller: Very well, Mr. LaRoe.

Mr. LaRoe: Well, our position regarding that is that, as [fol. 951] Mr. Laux has well explained, there should be no charge for unloading at all. Now, if there is a proposal to favor Philadelphia in that matter, I should think that we would have to oppose it. But our Port Authority has not acted on any such thing as yet, and I am hesitant to take the position in absence of official action.

In other words, I, as a lawyer, cannot determine their policy. I can only determine what their policy will be, and I think it will be a policy of opposition.

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Exam. Brown: When you refer to discrimination and prejudice during the course of your testimony, then you were not referring to Philadelphia in any respect?

Mr. LaRose: We were not, no, sir.

The Witness: No, sir.

Exam. Brown: Is that satisfactory along those lines?

Mr. Miller: Yes, sir. That is all.

Exam. Brown: Any questions, Mr. Brown?

Mr. Brown: No questions.

Exam. Brown: Mr. Donadio?

Mr. Donadio: No questions.

Exam. Brown: No more questions for respondents.

Mr. Fitzgerald: Mr. Examiner, may I move that the last question of Mr. Miller's be stricken from the record? I think it was improper. This witness did not testify as to Philadelphia in any respect.

[fol. 952] Exam. Brown: Well, is there any statement that the witness made harmful to the City of Philadelphia?

Mr. Fitzgerald: No, sir.

Exam. Brown: I do not see any reason why we should strike it. I think it is well to know what the position of New York Port Authority is. We will let the record stand as it is. Redirect.

Mr. LaRoe: No redirect.

Exam. Brown: That is all, Mr. Laux; thank you.

(Witness excused.)

Mr. LaRose: I call Mr. Walter P. Hedden, please.

Walter P. Hedden was sworn and testified as follows:

Direct Examination.

Mr. LaRoe: Mr. Hedden has no exhibits; only the prepared statement that is being circulated now. There will be a few last minute changes in the printed testimony, but I will call your attention to it when we come to that point.

Exam. Brown: You are referring to the prepared testimony?

Mr. LaRoe: Yes, sir. Has he been sworn in, Mr. Examiner?

Exam. Brown: Yes.

By Mr. LaRoe:

Q. Will you give your name and address?

A. My name is Walter P. Hedden. My business address is 111 Eighth Avenue, New York 11, New York.

Q. Please state your present duties and briefly summarize the experience which qualifies you to testify on the issues [fol. 953] in this proceeding?

A. I am Director of Port Development for The Port of New York Authority. I have been in the employ of the Port Authority for 27 years in various capacities, having to do with terminal and transportation improvements and the protection and promotion of traffic into and through the Port of New York.

In 1922 and 1923 I also acted as Research Agent for the U. S. Department of Agriculture in charge of studies for terminal improvements and more efficient distribution of fresh fruits and vegetables in the New York metropolitan area.

Q. Throughout your career with The Port of New York Authority have you paid particular attention to projects and operations in connection with the delivery of fresh fruits and vegetables to the New York wholesale market?

A. Yes. I was in charge of comprehensive studies of this subject which were made as early as 1922 and 1923, jointly between the Port authority and the U. S. Department of Agriculture. I have kept closely in touch with it ever since. Recently I had the immediate responsibility for preparation of proposals submitted by the Port Authority, at the request of the Mayor of New York, under date of February 10, 1948, for rehabilitation and reconstruction of the New York City's waterfront, including the waterfront piers used for the delivery of fresh fruits and vegetables by rail. [fol. 954] Q. Are you familiar with the methods of delivering fresh fruits and vegetables by rail and other means to New York City, the merchandising practices, the rate structure, the distribution to dealers and consumers and other physical and economic factors affecting this problem?

A. Yes.

Q. Have your duties also required you to become generally familiar with the delivery of other types of freight to Manhattan Island and other portions of the Port of New

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York and to acquaint yourself with operations in connection therewith?

A. Yes.

Q. Have you testified previously in this case?

A. No. The Port of New York Authority has been a party to the case since the beginning but our testimony in the original proceeding was presented through Mr. Philip Kraemer, our assistant traffic manager. My testimony will cover aspects which have occurred since the original hearings or were not developed adequately in previous testimony in behalf of the Port Authority.

Q. Will you state briefly the facts and reasons why deliveries of fresh fruits and vegetables by rail are made primarily to the pier stations on Manhattan Island, the locations of which have been described in greater detail by previous witnesses?

[fol. 955] A. Approximately 75 percent of the fresh fruits and vegetables consumed in the New York market are delivered in an area along the waterfront of Manhattan Island, between Barclay Street on the south and Canal Street on the north. It is within this area that the pier stations of the Pennsylvania Railroad, Erie Railroad, B & O Railroad and New York Central are located. These railroads are the principal carriers of fresh fruits and vegetables to the New York market.

The balance of the deliveries are made to chain store warehouses or are northern potatoes, and other types of vegetables and fruits which are delivered to team tracks or sidings in other parts of the district because they have special physical characteristics.

From a price-making standpoint individual lots of these decentralized commodities are not highly differentiated and they do not have to seek a central market when buyers and sellers meet for auction sales or private bargaining on the basis of the available daily supply and demand at that point.

The principal consuming population served by the New York wholesale market lies East of the Hudson River. About 80 percent of the volume delivered to the New York wholesale market area is distributed to consuming points East of the Hudson River.

The wholesale market, for many years, has been located

in the lower Manhattan area and the original considerations [fol. 956] which led to the location at this point have been fortified by the growth of facilities in this area to receive, sell and store these perishable commodities. Today there are 18 cold storage warehouses, with a gross of 13,000,600 cubic feet of cold storage space within 2½ miles of this wholesale produce centre. The railroads established their delivery terminals on this waterfront during the latter part of the nineteenth century and since 1900 have concentrated their fruit and vegetable deliveries at this point.

In 1927 and 1928 the Pennsylvania and Erie Railroads spent substantial sums in reconstructing the pier stations which they leased from the City of New York to improve them for handling fresh fruits and vegetables.

Q. If fresh fruits and vegetables are to be delivered by rail to terminals on Manhattan, do you regard the method of delivery of cars on floats alongside a waterfront station as a more economical and feasible method than an attempt to deliver these cars over a floatbridge to a team track?

A. Yes. Operationally there are only three possible alternative methods of delivery to Manhattan Island, none of which are economically practicable for the volume of fruits and vegetables which must be handled.

Q. Will you explain?

A. Only one of the carriers, the New York Central, has and all-rail line into Manhattan Island for freight deliveries. [fol. 957] This trackage, which is known as the West Side Line, enters Manhattan from the north over a low-level bridge at Spuyten Duyvil and continues south as far as Spring Street, to a station not far from the present wholesale market area. There are intermediate yards at various points, principally at 60th Street and 30th Street. This west side line, formerly operated over the City streets, but was reconstructed in 1930-32 at a heavy cost to the railroad. It has limited capacity and could not handle expeditiously the volume of fresh fruits and vegetables which are delivered to the New York market by rail even if the line were opened by interline tariff agreements to roads other than the New York Central.

It is significant that many cars of fresh fruits and vegetables delivered by the New York Central for trading in

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the wholesale market are carfloated to the pier stations of that railroad in the vicinity of Barclay Street.

A second theoretical possibility is the construction of a Trans-Hudson Bridge or terminal for railroad freight. A system of underground freight tunnels between New Jersey and Manhattan for delivery of cars of fresh fruits and vegetables and other freight at underground stations was considered in 1920 in great detail by the New York-New Jersey Port and Harbor Development Commission. Aside from the heavy cost of such a system it would be practicable for fresh fruits and vegetables only if trading could be conducted on a sample or grade basis and deliveries made [fol. 958] at several decentralized stations. In my judgment and many others who are familiar with the characteristics of these products, and the considerations governing their sale, such a change in method is not practicable.

The third method, available to the railroads in some degree at present, is the floating of the produce cars across the River on car floats and the switching of the cars across a float bridge into a team-track yard or alongside of the delivery platform. Certain railroads have limited facilities of this type on the west side of Manhattan in an area between West 26th Street and West 37th Street.

These team-track yards, served by a float bridge, are limited in capacity and deliveries thereto have to be trucked to the central wholesale market area.

I might interpolate in my prepared statement, Mr. Examiner, that the working capacity of those team-tracks, based upon the estimates of the agents, are as follows: Pennsylvania Railroad West 37th Street yard, 130 cars; Erie West 28th, 35; Lehigh Valley West 27th, 74; B. & O. West 26th, 56.

Also, I might state at this point that the working capacity of the New York Central 33rd Street yard served by the all-rail line is in the neighborhood of 350 cars, but it is heavily used, as are all of these, by other than fresh fruits and vegetables.

[fol. 959] Mr. Miller: Mr. Hedden, could you tell me—you said you got these figures from the agent. Do you mean they are taken from the testimony at the last hearing?

The Witness: No, sir. Our own staff periodically inter-

views the railroad agents for many facts, and these were the latest figures, right up-to-date, as to what they thought could be handled at a point accessible to a truck.

Exam. Brown: You have given figures for the New York Central team-tracks which are served by the float bridges.

The Witness: I did not separate those. That yard is accessible both from the all-rail line and from the float bridge. The 350 cars covers both of them.

Exam. Brown: You made no breakdown?

The Witness: No, I have not.

Exam. Brown: In other words, those yards will handle the rail freight coming in by the physical lines and also across the River by car floats?

The Witness: Yes. They are all heavily used, all of them, by non-perishables.

A. (Continuing): Consideration has been given from time to time to a plan for attempting to unify deliveries by rail to a large joint team-track yard with added facilities for receiving produce by other modes of transportation, selling, storing and distributing. Such a plan for switching cars off the floats into yard tracks and platforms has never been [fol. 960] advocated for Manhattan, because of the high cost of the real estate which would have to be acquired for such a terminal.

Aside from the economical impracticability of such an operation on Manhattan Island because of the high value of land, such an operating procedure, in my judgment, would not have capacity for handling cars across float bridges by switch engines in the heavy peak periods.

The existing practice of floating cars to Manhattan Island and discharging the freight to the deck of a waterfront station without taking the cars off the floats is the most feasible and economical method.

Under this system the waters of the Hudson River, within the pier-head line, are available to the railroads for floating car yards. The cost of acquiring the land space on expensive Manhattan real estate for the spotting of an average of 500 cars per day and a peak of 1,000 per day throughout the busiest season, is eliminated.

This is the most important factor to consider in equating the cost of delivery by float to a waterfront station as

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against delivery over a float bridge to adjoining upland area team-tracks.

Mr. LaRoe: Now, at this point, Mr. Examiner, there is an insert that is not in your prepared copy. Just one question and answer, so I wish you would listen carefuly to this.

Q. How much space on the Manhattan waterfront is now [fol. 961] used by the railroads at the fruit and vegetable piers, and what would it cost them, in your judgment, to acquire equivalent upland space to spot cars at teamtracks?

A. The total area occupied by the railroads at Piers 16, 17, 20, 21, 22, 27, 28 and 29 North River is about 40 acres, of which 20 acres are the pier structures themselves and the balance the water slip between the piers which are used as floating car yards to hold the cars on floats and to switch them in and out with tugs.

Real estate in the upland along the waterfront in the vicinity of the present produce piers, according to our calculations, would run about $800,000 per acre. To acquire 40 acres of such property would cost in the neighborhood of $32,000,000. The taxes and interest which together came to at least 6 percent, would approximate $2,000,000. At 100,000 cars per annum this would be $20.00 per car.

In the vicinity of the present team-track yards on Manhattan between 28th and 37th Streets, there is comparatively litle room for expansion since the upland begins to rise at 11th Avenue. Land in that vicinity costs about $400,000 an acre. Using the same method of calculation, the interest and taxes per annum would be at least $10.00 a car for a location in that area.

The reliance upon waterfront stations by the railroads serving Manhattan is not confined to fresh fruits and [fol. 962] vegetables. Today the railroads occupy approximately 35 City-owned piers on the Manhattan waterfront for the handling of freight of all descriptions in which the delivery by car float and necessary removal of the lading to an adjoining platform to make it accessible to the consignee is identical.

Q. Have the Port Authority and other public agencies considered, from time to time, the establishment of facilities designed to increase the efficiency of delivery of fresh fruit and vegetables to Manhattan Island?

A. Yes.

Q. Have these plans contemplated a continuation of the basic system of delivery of cars on floats alongside a waterfront station and the removal of the lading to the station platform as part of the transportation function of the carrier?

A. Yes. Plans for such terminals to accommodate all of the railroads in substantially the same location of their present terminals were developed as far back as 1921 by the then Commissioner of Docks of the City of New York in cooperation with a trade committee. Subsequently, both the City of New York and the Port Authority developed plans similar in this respect, but differing in other details, in the years between 1928 and 1948.

Q. Without going into a detailed description of these plans, will you state whether the improvements which the Port Authority or the City proposed to finance in the [fol. 963] interest of greater economies of operation departed from the basic operational procedure which you have outlined, namely, receiving cars on the floats to be unloaded by the railroad to the station platform?

A. These plans for improved terminals on Manhattan Island all retain this essential feature because no more practicable and economical method of delivering the cars appeared possible.

Q. Was it your judgment and the judgment of others who prepared the Port Authority plans that substantial economies could be achieved in delivery to the pier platform without departing from the basic operational procedure which you have outlined, that is, the unloading of the lading from the car to the platform by the carrier?

A. Yes. By establishing a union waterfront terminal which would reduce the overhead charges against each car through combining the alternating traffic peaks of the several individual carriers and providing an operation susceptible to efficient overall control of labor services, and using extensive modern platform-handling equipment, it was my judgment that the project would be financially self-sustaining from an overall standpoint if the entire revenues from the carriers for furnishing the use of the terminal and paying for the unloading equal $2.00 a ton. This figure was

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not only adopted in the revenue calculations of the project upon which an offer was made to the City of New York to build a union terminal at a cost of $27,000,000 on February [fol. 964] 10, 1948, but it was also the basis of my discussions with the railroad general managers at about that time. The costs were upon the wage levels of 1947.

Q. Let me get this clear. You say that you, as representative of the Port Authority, discussed with the railroads a proposal which had been made to the City of New York with the official approval of your Board under which they would be furnished a union waterfront terminal at which they would deliver freight in car floats and assume responsibility for unloading the freight to the platform at a cost of $2.00 per ton which would cover not only the unloading but the use of the terminal and the maintenance thereof?

A. Yes. We proposed that the Port Authority would finance the terminal and offered to maintain it and to perform the unloading and other services as agent for the railroad. We estimated the cost to the railroad of $2.00 per ton and used that figure in the economic analysis upon which the project was submitted to the City of New York. Our calculations were based upon the wage levels of 1947.

Q. What is the bearing on the issues in this case of your reference to Port Authority's Union Produce Terminal proposals in 1948?

A. My purpose is to stress that the most economical plan of terminal handling of fresh fruits and vegetables to Manhattan Island which we could devise, called for holding [fol. 965] the car on the float in accordance with the present practice and making the delivery to the station platform to effect final delivery to the consignee.

Q. Did not you make a further supplemental report on this subject to the City of New York at the request of Mayor William O'Dwyer in 1949?

A. Yes. Following the Board of Estimate hearings previously referred to—I am not sure I did previously refer to it. Anyway, Board of Estimate hearings were held in July, 1948, and the Board of Estimate of New York City, in September, 1948, rejected the Port Authority proposal in favor of going ahead with its own general program of waterfront rehabilitation and improvement.

However, on December 3, 1948, the Port Authority was again requested to review its entire proposal for the rehabilitation of the shipping and railroad piers at a cost of $114,000,000 and to transmit a supplemental report which might be more financially attractive to the City.

In compliance therewith the Authority submitted a report on April 27, 1949. In this supplemental report, the Port Authority withdrew that part of its proposal which dealt with the $27,500,000 Union Produce Terminal and referred to the change occasioned by the Interstate Commerce Commission's decision in October 19, 1948, which approved the assessment of a separate fruit and vegetable unloading [fol. 966] charge at Manhattan waterfront terminals. The subject was discussed at some length but was summarized in the three paragraphs appearing in the letter of transmittal which said—and I am quoting now from the letter of transmittal of the supplemental report to the City of New York dated April 27, 1949:

"The change in railroad practice was approved by a split decision of the Interstate Commerce Commission, effective on November 1st. The Port Authority had energetically opposed the imposition of the extra charge. An appeal for reconsideration of this decision is now pending before the Interstate Commerce Commission on petition of the Port of New York Authority and shippers and receivers. However, there is no certainty that this appeal wil lbe given favorable reconsideration. There has been a substantial reduction of rail deliveries of fresh fruits and vegetables to the lower Manhattan piers, and a shift in the comparative costs of such delivery as between the lower Manhattan waterfront and other delivery points.

"Furthermore, there is no certainly that the reversal of the long-established practice of delivering fresh fruit and vegetable consignments and making them accessible to consignees by unloading the cars at Manhattan waterfront stations, may not presage other changes which will further affect the economies of a waterfront produce terminal location.

[fol. 967] "It is the firm conviction of the Port Authority that the plan for a modern terminal market as outlined in the previous report of February 10, 1948, still represents a

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sound and efficient method of reducing the costs of handling this produce, and the elimination of the present congestion in the market. However, the addition of a separate charge for delivery at the lower Manhattan piers raises a serious question of whether it is safe to risk the investment of $27,500,000 at this location until the method of assessing railroad charges has been further clarified."

Q. In withdrawing the proposal for the Union Produce Terminal, in lower Manhattan, the Port Authority's report to the City of New York on April 27, 1949, referred to the shift in rail deliveries of fresh fruits and vegetables to lower Manhattan piers. Will you develop that point a little further?

A. I think your question, if I may say so, Mr. LaRoe, would be better if the "to lower Manhattan piers" was changed to "from lower Manhattan piers."

Q. That is right, "in rail deliveries of fresh fruits and vegetables from lower Manhattan piers."

A. Effective on shipments after November 1, 1948, the railroads making deliveries at the lower Manhattan pier stations assessed charges for the unloading of fruits and vegetables. As a result the deliveries to these stations increased from $1.95 to $2.60 per ton, above the rate for team-track delivery was available either east or west of the [fol. 968] Hudson River. The immediate result was an attempt on the part of the shippers or receivers to avoid paying the extra charges, by taking rail deliveries at these outlying team-track stations and paying the cost of trucking into the market, or by shifting from rail to over-the-road motor truck for the line haul. In February, 1949, deliveries of fresh fruits and vegetables to the Manhattan pier stations were off nearly 50 percent from the same period of 1948. Only 2,828 cars were delivered by carfloat to Manhattan piers in February, 1949, as compared to 5,450 in February, 1948. During the same period truck and boat receipts increased by 1,135 carload equivalents. Rail deliveries to team-tracks in the New Jersey waterfront yards increased by 915. In April, the deliveries at the Manhattan pier station were down by 2,471 cars, the boat and truck receipts were up 1,156 and the New Jersey team-track deliveries were up 845.

Substantially all of the produce which was shifted from the Manhattan pier stations had ultimately to be taken to the lower Manhattan market for primary sale. The shift to the over-the-road trucks certainly did not help the railroads. The diversion of rail cars from Manhattan piers to scattered team-tracks in New Jersey and New York, although it may have saved individual shippers or receivers a small margin of cost to the extent that the trucking to the market was less than the unloading charge assessed at the railroad pier [fol. 969] stations was not beneficial to anybody. The railroads were forced to make deliveries at yards which were not adequate. The increased movement through the streets in the congested central market area created greater traffic problems in an already overcrowded section.

Q. Let me interrupt there to ask you whether ever since the Port of New York Authority was created, this matter of street congestion on Manhattan Island has not been one of the major problems that they have been fighting?

A. Yes, it has been.

Q. And this has made that condition worse?

A Particularly in the market area which is one of the worst congested centers.

Q. All right; go ahead.

(A) (Continuing) The diverson of rail shipments from the pier stations to other points did not establish a new central trading point. It simply intensified the problems of the established market. The net result was greater congestion in terminal handling and dissatisfaction among buyers, labor and other elements concerned in the central wholesale market. From the standpoint of progress in bringing about some orderly plan for the modernization of the central wholesale area, the assessment of the charge for unloading caused a severe setback.

[fol. 970] As long as the marketing of fresh fruit and vegetables requires a central trading point for the majority of the receipts, and such trading point is east of the Hudson River, so that rail delivery must be made in floating equipment, real progress in reducing handling costs, wastage, street congestion, can be achieved only through a plan for providing a modernized waterfront terminal. At such a terminal rail deliveries by carfloat must include delivery of

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the freight to a point accessible to the consignee without extra charge for such delivery, or nobody can count on a continued volume flow of the cars direct to the terminal.

The imposition of the extra loading charge has demonstrated that it serves to scatter deliveries to points where the charge is not assessed, requiring local trucking into the market, with increased local street congestion, disorganization of trading, more waste and confusion.

Q. The Port Authority has a direct interest in this question of improving terminal conditions and reducing terminal costs for handling food stuffs, does it not?

A. Yes. The 1921 Treaty between New York and New Jersey, which created the Port Authority, touched at several points on the necessity for better co-ordination of terminal transportation and other facilities of commerce, which was expected to result in economies benefiting the entire nation, as well as the two States.

[fol. 971] The Port Authority was expected to encourage the investment of capital in development of terminals which would be more efficient and was given powers itself to finance and construct such terminals and, in addition, was directed to cooperate with Federal, State and Municipal officials in improvements of this character.

Q. And in accordance with these objectives, the Authority has actively planned and proposed such improvements?

A. Yes, as I have outlined heretofore.

Q. You regard the imposition of an extra charge for performance of the carriers' obligation to deliver freight at a point accessible to the consignee is not only contrary to the proper interpretation of its transportation obligation, but also detrimental to attempts to plan and carry out terminal improvements such as you have described?

A. Yes, and that goes for not only fresh fruits and vegetables but any other commodities to which this same plan might be applied. We see no valid distinction between unloading a carload of oranges from a car to place it on the platform of Pier No. 28 of the Pennsylvania Railroad, where the consignee can pick it up, and the unloading of a car of butter at the DL&W Pier No. 13 in the same general vicinity.

Nor for that matter is there any difference in principle

between a carload of oranges unloaded on Pier No. 28 and a carload of plumbing fixtures unloaded on Pier No. 29. [fol. 972] Neither is accessible to the consignee on the carfloat.

Our proposals to the City of New York for improvement in the methods of delivering railroad freight to Manhattan waterfront stations were not confined to the proposed Union Produce Terminal. We proposed four consolidating stations on the waterfront for other freight, delivered to Manhattan Island by carfloat.

If these plans are ever to be carried forward, it is necessary that the float delivery method at union pier stations not be subjected to an assessment of an extra charge to make the freight accessible to the consignee. Otherwise, consignees would inevitably scatter cars to such team-tracks as are available, and there are not very many, with the result that a substantially increased burden would be thrown upon the streets and highways in an already congested area.

Q. Are you generally familiar with the physical operations in connection with the unloading of both fruits and vegetables and other commodities from cars on floats at waterfront railroad stations?

A. Yes. I have observed the operations many times and have supervised studies of the physical operations.

Q. In the case of fresh fruits and vegetables is there a distinction in your mind between the basic process of unloading a car to make the lading accessible to consignees and other auxiliary services that may be performed with or [fol. 973] without specific compensation in conjunction therewith?

A. Yes. What I call the basic delivery under the railroad's obligation to make the freight accessible to the consignee, it is necessary to bring the lading from the car on the float to the platform at a point to which the consignee's truck can come. Any special sorting, stacking or display other than that required to put the consignee's freight from a given car into the same section is a service over and above the basic delivery. So is recoopering. So is the furnishing of space on the station platform for selling.

Mr. LaRoe: Now I have another insert of one question there which is not in the prepared testimony.

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Q. There has been a great deal of confusion as to what services are performed at the produce piers and their relationship to the issues in this proceeding. Will you endeavor to clarify this situation?

A. The fruit and vegetable terminals of the railroads are used for three purposes. First, it is the place where normal unloading from carloads to the pier platform takes place so that the consignee can get his freight. Beyond the unloading some consignees request, and the railroad performs, certain sorting, stacking services for which an extra charge is made. Thirdly, some consignees make use of the space on the piers for selling and some do not.

As I see it, the only issue in this proceeding is whether [fol. 974] the railroads should be permitted to make a charge for the normal unloading. The question of any services performed at the request of the consignee and the adequacy of the compensation therefore for such things as stacking, sorting, use of the space on the pier for sales, are not an issue in this case, and should not be confused with it.

Q. I suppose that you are not taking any position here with regard to what compensation, if any, the railroads should get for the services that go beyond simple delivery on the floor of the pier?

A. No. I do not understand that there is any point in issue on that.

Q. But you are taking the position, as I understand you, that the imposition of this extra charge for simple delivery on the pier has thrown a monkey wrench into the plans of the Port Authority and the City for the improvement of this situation?

A. Yes, they have.

Q. To the extent of causing the Port Authority to withdraw a 27 million dollar offer?

A. That is correct.

Mr. LaRoe: You may cross examine.

Exam. Brown: No further questions on direct?

(No response.)

Exam. Brown: All right, Mr. Miller.

Cross-examination.

[fol. 975] By Mr. Miller:

Q. Under this treaty of 1921 between New York and New Jersey, which you refer to, Mr. Hedden, can you tell me what is the area which is subject to the jurisdiction of the Port of New York Authority?

A. It is defined by specific means and bounds, but for purposes of quick characterization, it is the area in both states, New York and New Jersey, within about a 25 mile radius of the Statue of Liberty.

Mr. Miller: That is all.

Mr. Smith: I have no questions, Mr. Examiner.

Exam. Brown: No further question from the respondents?

(No response)

Mr. LaRoe: No redirect.

Exam Brown: During the course of your testimony, you stated that the principle consuming population served by the New York wholesale market lies east of the Hudson River. Also, that about 80 per cent of the volume delivered to the New York wholesale market is distributed to consuming points east of the Hudson River. I consider that statement somewhat vague. I think you should explain what you mean by the term "east of the Hudson River" and I think you should also tell us where the other 20 per cent goes.

The Witness: The phrase "east of the Hudson River" means the New York City, Westchester County, Nassau, and Suffolk Counties, which are on Long Island, east of New York City, any redistribution into Connecticut, and [fols. 976-981] any redistribution into the Counties of New York State east of the Hudson River, north of Westchester —there is a very insignificant part that goes in that area— but I would say I am talking about greater New York City, plus Westchester, Nassau and Suffolk Counties, and to a limited extent Connecticut.

Exam. Brown: How about the other 20 per cent?

The Witness: The other 20 per cent is trucked back to either northern New Jersey or points, in a few cases—very minor—where they go on through the State of New Jersey

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to a point in Pennsylvania. During summer vacation seasons, some of the buyers out there draw their supplies from the New York market.

Exam. Brown: Any further questions of this witness?

(No response)

[fol. 982] G. C. SPANGLER was sworn and testified as follows:

Direct examination.

By Mr. Augello:

Q. Mr. Spangler, will you give us your name and position that you hold with your company?

A. My name is G. C. Spangler and I am the traffic manager for Tassini and Salisch, located at 363 Washington Street, New York City.

Exam. Brown: Traffic manager of what organization?

The Witness: Tassini and Salisch.

By Mr. Augello:

Q. Are they receivers of fruits and vegetables?

A. They are.

Q. Will you please give us your experience in the transportation field?

A. I have been in the transportation field of fruits and vegetables over a period of about 25 or 30 years.

Q. Have you worked for a railroad?

A. For a private refrigerator carline, the Pacific Fruit Express Company.

Q. Who is that owned by?

[fol. 983] A. I understand it is owned by the Union and Southern Pacific.

Q. How many years were you employed by the Pacific Fruit Express?

A. About 10 years.

Q. And how many years have you been employed as traffic manager for your present connection?

A. 15 years.

Q. In the course of your duties, have you had occasion

to visit the New York piers to see the unloading of your vegetables?

A. I have, yes; frequently.

Q. Will you please tell us, for the record, just how that is done?

A. The merchandise is brought over on carfloats and unloaded from the car from off the float on the pier where we take delivery.

Q. And what happens to the vegetables when you take delivery?

A. We truck them to our store in Washington Street.

Q. For sale?

A. For sale.

Q. Is that the usual procedure of all your vegetables?

A. Yes.

Q. And how many cars of vegetables do you normally handle in a year?

A. Approximately 2,000 cars.

Q. Do you take delivery of any of your vegetables at team-track?

[fol. 984] A. We do.

Q. Will you tell us just where those team tracks are located and what proportion of those cars represent your total tonnage?

A. We take delivery on B&O team-track located on 26th Street on the Island of Manhattan, and the percentage of the number of cars that we take at 26th Street would be approximately, without knowing the exact number, 25 percent.

Exam. Brown: 25 percent of the total?

The Witness: 25 percent of the total.

Exam. Brown: This 2,000 carloads was just the fresh vegetables that you received from pier delivery, is that right?

The Witness: 2,000 carloads, Mr. Examiner, would be the total amount received at the pier and the team-tracks.

Exam. Brown: Can you give us a better, a little better breakdown on that?

The Witness: Well, in what way?

Exam. Brown: Well, you included the 2,000 carloads and the others 25 percent. Will you give us the carloads for

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both, approximately? It would be a little more enlightening and save a little mathematical computation.

The Witness: You mean the number of carloads?

Exam. Brown: How many carloads do you receive from pier delivery and how many do you receive from B&O track delivery from 26th Street?

The Witness: Approximately 1500 on the pier and 500 on the team track. That is approximately.

[fol. 985] By Mr. Augello:

Q. Is the method that you just testified to as to the unloading and the delivery by your trucks the same for other receivers of vegetables on those piers?

A. Yes. Without knowing the exact details of the other man's business, I would say yes.

Q. So that as to vegetables, all cars are unloaded and delivery is taken immediately in trucks off the pier and brought into the receivers' stores in Washington Market and sold there, is that correct?

A. That is correct.

Q. That is all.

Mr. LaRoe: I have just a few questions.

By Mr LaRoe:

Q. When the goods come to the pier on the carfloat, and the carfloat ties up to the pier, is there any physical means provided whereby the truck of the consignee can get on to the carfloat?

A. None whatsoever.

Q. Do the railroads permit you to have access to the cars on the carfloat?

A. For inspection purposes, yes.

Q. I mean for delivery purposes.

A. They do not.

Q. You could not, if you wanted to, go on to the carfloat and take delivery of the freight?

[fol. 986] A. No.

Q. Where is the first point where the freight is physically made available to you so that you can conveniently pick it up?

A. On the pier floor.

Q. Now, there are certain services in addition to that of placing it on the pier floor that are sometimes rendered on certain of these commodities. Are they rendered on yours?

A. On some occasions, yes.

Q. Are there any for which you do not pay?

A. No.

Q. Now, it being admitted here this morning that the accessorial charges are not in issue, you take the position, as I understand it, that simple delivery, in order to be accomplished, must reach the floor of the pier, is that right?

A. That is correct.

Q. And there cannot be delivery on the carfloat?

A. No, sir.

Q. And is not delivery on the carfloat?

A. No, sir.

Mr. LaRoe: I think that is all. Thank you. Oh, one moment.

By Mr. LaRoe:

Q. Why did you have 500 cars in the B&O yard? That isn't normal, is it?

A. Well, it is pretty hard to determine the exact number of cars that we handle in the B&O yards because conditions fluctuate from time to time. That depends largely to some extent on commodities that might require handling through [fol. 987] the team track.

Mr. LaRoe: All right, that is all; thank you.

Exam. Brown: Any further questions on direct?

(No response)

Exam. Brown: Cross examine.

Cross examination.

By Mr. Smith:

Q. I have just one question, Mr. Spangler, if I may. You referred to the fact that you take delivery of vegetables on B&O team tracks at 26th Street, and I should like you to tell me whether within the past few months you have

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taken delivery of vegetables on any team tracks other than the B&O team tracks at 26th Street?

A. Just recently, yes.

Q. Would you expand that a little bit and give us some details?

A. Well, it just so happened that we took delivery of two cars of our merchandise at 28th Street on the Erie Railroad, and 28th Street is located on Manhattan Island.

Exam. Brown: Two carloads?

The Witness: Two carloads, and that just happened about 48 hours ago.

By Mr. Smith:

Q. Can you think of any other instances within the past few months?

A. Not on Manhattan Island.

Mr. Smith: That is all.

[fol. 988] Exam. Brown: You left an inference here that this team-track delivery to the extent of 500 carloads—I assume that is per year—was rather unusual.

The Witness: That is right.

Exam. Brown: Well, now, let us find out exactly what the situation is. Take the year 1946. What was your percentage of team-track delivery?

The Witness: That I could not tell you, Mr. Examiner. We use the team-track—we did use the team track during that period for what you might call normal operation.

Exam. Brown: Well, what would normal operations translated into terms of carloads mean?

The Witness: Oh, I would say 250 cars.

Exam. Brown: As compared with a total operation of how many?

The Witness: Of the entire—of our entire tonnage?

Exam. Brown: That is right.

The Witness: It would be pretty hard to say exactly, because our tonnage fluctuates with the season. It would probably reach around 2,000 cars.

Exam. Brown: No, how about the year 1947?

The Witness: 1947 operation would have been approximately about the same.

Exam. Brown: How about 1948?

The Witness: Well, up to a certain period that would be about the same, also.

[fol. 989] Exam. Brown: Now, what period do these figures that you originally gave cover; 1,500 carloads for pier delivery and 500 carloads for team-track delivery?

The Witness: That would approximate between the first of November, 1948, to about now.

Exam. Brown: In other words, that includes both the '48 and '49 seasons?

The Witness: That is right, which figures are not exact because I haven't checked them, but I am giving you estimates which I think are correct.

Exam. Brown: Where did you get these particular estimates, these 1,500 carloads and 500?

The Witness: Where did we get them?

Exam. Brown: That is right.

The Witness: That is——

Exam. Brown: California? Florida?

The Witness: No. These vegetables all originated on what we would term the Pacific Coast States.

Exam. Brown: And moved to the Chicago area and then through Erie?

The Witness: Through St. Louis and Chicago gateways.

Exam. Brown: Most of them moved through Chicago, didn't they?

The Witness: Well, yes, that is right.

Exam. Brown: Now, what carrier handled it from Chicago, handled this tonnage from Chicago?

[fol. 990] The Witness: Baltimore and Ohio Railroad.

Exam. Brown: Exclusively?

The Witness: Yes, I would say exclusively.

Exam. Brown: It did not have any material amount of shipments over the Erie Railroad?

The Witness: He did not.

Exam. Brown: Any further questions, Mr. Miller?

Mr. Miller: No, sir.

Exam. Brown: Any further questions on direct?

(No response)

Exam. Brown: You are excused, sir.

(Witness excused)

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HERBERT E. VOLK, was sworn and testified as follows:

Direct examination.

By Mr. Augello:

Q. Mr. Volk, will you state your name and position with your company?

A. Herbert E. Volk, traffic manager for Robert T. Cochran & Company, Inc.

Mr. LaRoe: Speak up. These people back here cannot hear you.

By Mr. Augello:

Q. How long have you been employed with your present employer?

A. Over 30 years.

[fol. 991] Q. Will you please tell us if you have been on the New York piers in the course of your employment with R. T. Cochran observing the unloading and the delivery of your vegetables?

A. Frequently.

Q. And by the way, are you also a grower and a receiver?

A. Yes, sir.

Q. And where do you get your vegetables from, principally?

A. Florida and the Carolinas.

Q. And what is your total tonnage, approximately?

A. Around 2,000 cars.

Exam. Brown: Per year?

The Witness: Per year.

By Mr. Augello:

Q. In the course of your duties, you say you have been on the piers observing the unloading. Will you please state for the record just what you have observed?

A. On Pier 28 the cars were floated over from Jersey and unloaded from the carfloats on to the pier floor for delivery to the consignee.

Q. At approximately what time is that done?

A. Anywhere between 10 p.m. and 2 a.m.

Q. And what happens after the cars are unloaded by the railroad?

A. The consignee takes delivery and trucks it to his store for sale.

Q. And is that the usual and customary procedure?

A. On vegetables, it is.

[fol. 992] Q. In all cases?

A. In all cases.

Exam. Brown: Are you speaking for your own firm or for all firms in that connection?

The Witness: My own firm.

Exam. Brown: And Mr. Augello asked you if that is the usual procedure. Now, when you answered that, did you answer it in a general way or are you speaking only for your own firm?

The Witness: I could say it in a general way, too.

Exam. Brown: I just want to be sure.

By Mr. Augello:

Q. From your observation, Mr. Volk, that is generally true?

A. That is true because there is no market on Pier 28.

Q. You mean no selling market?

A. No selling market on Pier 28.

Q. So that in all cases, your vegetables are unloaded and immediately trucked by your trucks to your store and sold there?

A. That is right.

Q. And approximately how long do the vegetables stay on the pier floor before you take delivery?

A. They are removed at once, after delivery.

Mr. Van Arnum: You mean that you truck them off the pier immediately they are made available to you by the railroad putting them on the pier?

The Witness: That is right.

[fol. 993] Exam. Brown: You mean, by your question, you draw a distinction between the time that they were put on the pier and the time it became physically available?

Mr. Van Arnum: That is right.

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By Mr. Augello:

Q. Mr. Volk, who loads these vegetables from the pier floor to your truck?

A. Private people, truckmen, for instance.

Q. You mean labor hired by your truckmen?

A. That is right.

Q. For which you pay for?

A. That is right.

Q. And that also applies to other receivers of vegetables?

A. Yes, sir.

Exam. Brown: Are they on the pier floor all during the delivery period or do they ride the trucks? You are talking about labor employed for the purpose of loading, as I understand it, is that right?

The Witness: That's right.

Exam. Brown: You understand my question?

The Witness: No, sir, not exactly.

Mr. Augello: Mr. Examiner, I think I can clear that.

Exam. Brown: If you will, Mr. Augello.

By Mr. Augello:

Q. On occasion, some of these vegetables are taken on what the trade calls "on the fly." Will you please explain what that means?

[fol. 994] A. Oh, they are put on the trucks as soon as they come off of the carfloats. They do not stay on the pier a minute. They are put right on to the trucks to be taken away.

Mr. Van Arnum: But, Mr. Volk, what the Examiner wants to find out is, the men who load the vegetables from the pier floor to your trucks to take to Washington Street are your employees.

The Witness: Yes.

Mr. Van Arnum: Do they remain on the pier all during the night, or are they employees who come over on the truck and then go back with the truck? That is what he was trying to find out.

The Witness: They are loaders who stay there on the pier.

Mr. Van Arnum: Is that what you want to know?
Exam. Brown: Yes.

By Mr. Augello:

Q. And are not paid by the railroads?
A. Not paid by the railroads.
Q. So all you get, Mr. Volk, is simple delivery?
A. Right.

Exam. Brown: I think you had better explain what you mean by simple delivery. The term has been used, but whether you mean it in the same sense or not, I do not know.

Mr. Augello: A simple delivery, as Mr. LaRoe stated in his opening remarks, is the freight available, accessible to the consignee to place on his truck from the pier floor, with-[fol. 995] out any stacking or sorting or any accessorial services.

Exam. Brown: Then your question does not include shipments which have been stacked on the pier floor?

Mr. Augello: It is stacked by the railroad labor, yes, taking them off the hand trucks and placing them on the pier floor, but not sorted according to marks or sizes.

Exam. Brown: Then when you say simple delivery, you would include stacking where the shipments have not been sorted, isn't that right?

Mr. Augello: Stacking, yes. It is the duty of the carriers to stack the freight on the pier floor approximately in the same manner that they appear in the car.

Exam. Brown: Well, by simple delivery, then, as I understand it, you mean after the shipments are on the pier floor, ready for delivery to the consignee.

Mr. Augello: Yes, sir.

Exam. Brown: Whether they are stacked or not stacked.

Mr. Augello: That is right. In other words, on the fly, that would be simple delivery because the truck is waiting there for these hand trucks to come out of the car and they are put on the truck by consignee's labor and paid for by the consignee.

Mr. LaRoe: If the Examiner will permit, I should like to get that clear, too.

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By Mr. LaRoe:

Q. Do I understand now that there is any commercial [fol. 996] stacking of these goods for the convenience of the consignee and his sales efforts? What I have in mind is this: I should think that the railroad itself, if it is going to make economical use of the pier, would have to do a little stacking. They would not want everything in one layer on a pier because they would be wasting space. Now, it is my understanding that the railroad itself, in order to make economical use of the pier, does some piling of the freight on the pier, but that is for their convenience.

I want to know if there is any commercial stacking of your freight that you do not pay for.

A. No, there is not.

Exam. Brown: Isn't it a fact that the railroads do not sort fresh vegetables?

The Witness: They do not.

Exam. Brown: Neither do you?

The Witness: We do.

Exam. Brown: Do you sort them on the pier?

The Witness: After the railroad stacks them on the pier, our labor breaks down the stacks and separates the marks and the grades and the sizes and the varieties of vegetables.

Exam. Brown: Do you load the vegetables then or later?

The Witness: And then we load them on the trucks.

Exam. Brown: In other words, you sort them and later load them. You do not sort them and immediately put them in a truck, is that the idea?

[fol. 997] The Witness: Right. Except on the fly. When we take stuff on the fly, we do not try to sort it.

By Mr. LaRoe:

Q. You said that on the fly is exceptional.

A. Yes, it is.

Q. In the normal cases, the railroads simply put it on the pier in such piles as operates to their convenience, and any stacking that you want for your convenience, you do yourself and pay for it?

A. Exactly so.

By Mr. Augello:

Q. And that is usual and customary for all receivers to do of vegetables?

A. Yes, right.

Mr. Augello: That is all.

Exam. Brown: What carriers handle your vegetables from the south?

The Witness: From the south? Seaboard, Pennsylvania —

Exam. Brown: Just separate them according to route. The Seaboard takes the——

The Witness: The Florida East Coast.

Exam. Brown: The Seaboard, for example, will take your vegetables from Florida up to what point?

The Witness: Potomac Yards.

Exam. Brown: And from Potomac Yards, what carrier then will handle it?

[fol. 998] The Witness: The Pennsylvania Railroad.

Exam. Brown: Do you use any other carriers beyond Potomac Yard other than the Pennsylvania Railroad?

The Witness: Not on southern vegetables.

Exam. Brown: You use Pennsylvania delivery exclusively?

The Witness: Yes, sir.

Exam. Brown: From the south?

The Witness: Yes, sir.

Exam. Brown: Do you have any vegetables coming from the west?

The Witness: Yes, sir.

Exam. Brown: What lines do you use there?

The Witness: New York Central from Chicago.

Exam. Brown: You do not use any other carrier?

The Witness: No.

Exam. Brown: From Chicago?

The Witness: Except occasionally where we want Pier 29 delivery on a commodity like tomatoes, we route that on the Penn.

Exam. Brown: You use the Erie?

The Witness: Only on fruit. We handle a little fruit, too.

Exam. Brown: Where do you get that, Pacific Coast?

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The Witness: Yes, sir.
Exam. Brown: What carriers handle that east of Chicago?
The Witness: Erie.
[fol. 999] Mr. LaRoe: Did you finish, Mr. Examiner?
Exas. Brown: Yes.

By Mr. LaRoe:

Q. Can I ask to what extent you use team-track delivery?
A. Well, on the New York Central, we handle all our western vegetables team-track delivery.
Q. Aside from the New York Central deliveries, to what extent do you use team tracks?
A. On the Penn we use the pier delivery.
Q. No, I did not ask you about the pier delivery. On the other than New York Central, fruits or vegetables, to what extent do you use team-tracks?
A. None.

Mr. LaRoe: That is what I understood.
Mr. Augello: That is all.

Exam. Brown: Any further questions on direct examination?
Mr. LaRoe: Yes, I have just one or two.
Exam. Brown: All right, Mr. LaRoe.

By Mr. LaRoe:

Q. In your case, is there any means by which you can get on to the carfloat with your truck or otherwise take delivery of the freight on the carfloat?
A. No, sir.
Q. Where is the first place where you are given real access to the freight to accept delivery?
A. On the pier floor.
[fol. 1000] Q. Does that involve, in your case, anything beyond the mere placing or piling of the freight on the pier floor?
A. No, sir.
Q. Is there any accessorial service in connection with delivery for some commercial purpose such as display or sorting or stacking which the railroads perform?
A. No, sir.
Q. In no case whatever?

A. No, sir.

Q. So that all they do with respect to all of your freight is simply place it on the pier floor and nothing more?

A. That is all.

Mr. LaRoe: That is all.

Exam. Brown: You use auction services at all in connection with the disposition of your fruit?

The Witness: Only a few cars of tomatoes during the Cuban season.

Exam. Brown: You do not handle any auction service in connection with citrus fruits?

The Witness: We handle no citrus fruits.

Exam. Brown: What fruits do you get from the west?

The Witness: From the west we get cantaloupes and honeydews.

Mr. Wells: I cannot hear the witness.

Mr. Augello: Will you speak a little louder, Mr. Volk? [fol. 1001] The Witness: From the west we handle fruit cars of cantaloupes and honeydews.

Exam. Brown: You do not handle those through auction?

The Witness: No, through private sale.

Exam. Brown: Tell us about these tomatoes.

The Witness: The Cuban tomatoes?

Exam. Brown: Any tomatoes.

The Witness: Well, right now we are handling the California tomatoes at private sale through our store and taking delivery from the pier and riding them to our store, putting them on display and sale there.

Exam. Brown: You do not put them on display on the docks?

The Witness: No, sir.

Exam. Brown: And you do not use auction facilities for them?

The Witness: No, sir.

Exam. Brown: How about your practice in the past? Has that been the same?

The Witness: That has been the same.

Mr. Donadio: You display your melons on the pier platform for sale?

The Witness: We have them displayed on Pier 19, I think it is, when we can get on to it.

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Exam. Brown: What do you mean by that?

Mr. Donadio: They are displayed on the platform for the [fol. 1002] purpose of sale.

The Witness: Not necessarily.

Mr. Donadio: What are they displayed for then?

The Witness: Well, there is a buyers' market down there on Pier 19 and sometimes you are able to sell part of a car down there.

Exam. Brown: Just a moment. I want to straighten this record out before we proceed. What did you mean when you said when we can get on to the floor?

The Witness: The space is limited for melons during the heavy period. They haven't got enough room for all the arrivals to unload them on Pier 19.

Exam. Brown: All right, Mr. Donadio.

Mr. Donadio: Then I do understand correctly, do I not, that you do, on occasions, display your melons on the pier floor for sale?

The Witness: Just the melons, yes, sir.

Mr. Donadio: That is all. Thank you.

Exam. Brown: How many carloads of melons do you handle in a year?

The Witness: Oh, not over 50.

Examiner Brown: 50?

The Witness: That is all.

Exam. Brown: Have you any questions, Mr. Wells?

Mr. Wells: Yes.

[fol. 1003] By Mr. Wells:

Q. Mr. Volk, in the case of the vegetables from Florida, you handle those by pier delivery?

A. Yes, sir.

Q. And that has been true during the thirty years, roughly, of your experience here in the New York market?

A. Yes, sir.

Q. Up until the time that the suspended schedule went into effect, had there been any charge of any kind paid by you as a consignee other than the line haul charge up to the point where you could take delivery on the pier of the vegetables you received from Florida?

A. No, sir.

Q. Has there been during all of that period of time any

service after you took delivery on the pier or where it was available to you for delivery, for which you have not paid additional?

A. No, sir.

Q. And any sorting or any stacking or any displaying or anything of that sort is something for which you, yourself, have expended money or expended labor for which you have paid direct to that labor?

A. That is right.

Q. And there is no difference today in the amount of the service rendered by the rail lines subsequent to the time when it is available to you on the pier floor?

[fol. 1004] A. No, sir.

Mr. Wells: That is all.

Mr. LaRoe: There is only one point that I am not satisfied with as to clarity.

By Mr. LaRoe:

Q. It seems that on all your traffic, other than melons, you never asked the railroads to do anything beyond simple delivery, is that right?

A. Correct.

Q. Now, let us deal with the melons and get that picture clear. On the melons, they are sometimes displayed for one reason or another on one pier, but in that one instance, does the railroad perform any service beyond simple delivery, and by that I mean the mere placing of the freight on the floor of the pier?

A. No, sir.

Q. Anything beyond that is an expense that you bear and the railroads do not?

A. Right.

Mr. LaRoe: That is all.

Exam. Brown: That is all, sir.

(Witness excused.)

Mr. Miller: Mr. Examiner, I should like to ask Mr. LaRoe a question for the purpose of clarity. There have been a number of questions here referring to certain accessorial services on the piers, and most of the time that has appar-

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[fol. 1005] ently referred to the sorting and stacking. I am not sure whether Mr. LaRoe has some idea of some other services or not that he is covering with that term "accessorial services."

Mr. LaRoe: When I use the word "accessorial" in this case, I refer to any service performed in connection with this freight beyond the point of simple delivery. Such as, for example, the use of the pier for auction purposes. Now, if after simple delivery has been completed and the railroad's obligation has ended with respect to delivery, then, if there is a use of the pier for auction purposes, we contend that if the railroads want to charge for that, that is a matter of leasehold and rental, and has nothing to do with the transportation rate because the transportation service has ended.

Mr. Miller: Now, all I want to know, Mr. LaRoe, is what is the meaning of your word "accessorial services."

Mr. LaRoe: I told you—anything that happens to the freight in connection with delivery beyond the point of simple delivery, and to clarify my answer, we take the position that every——

Mr. Miller: Wait a minute. Can't you just tell me? Instead of saying it is everything beyond something, can't you tell me exactly what it is that you are talking about?

Mr. LaRoe: I am not under cross examination.

Mr. Miller: No, sir. You do not have to answer my questions if you do not want to. I am only asking you to do it so [fol. 1006] I can understand what your questions mean.

Mr. LaRoe: I am trying to be helpful to you, and I should like you to clarify the record by showing any service that you render beyond simple delivery that is not paid for.

Mr. Miller: Would you mind if I get straight your question first?

Mr. LaRoe: You see, I have the same right to ask you questions that you have to ask me.

Mr. Miller: Certainly. There is no question about that. Before I start answering your question——

Mr. Donadio: Maybe we ought to object to the question before we know what the question is about.

Exam. Brown: Read that back.

(The reporter read back the discussion between Mr. Miller and Mr. LaRoe.)

(Discussion off the record.)

Mr. LaRoe: I think that Mr. Miller is entitled to a frank answer as well as I can give it to him about these accessorial services. I do not claim to be as familiar in detail with these individual services as some of these expert witnesses are, but I will say this, that I call an accessorial service anything that is rendered beyond the end of the transportation service; that is to say, beyond simple placement of the freight on the floor of the pier where it is accessible to the consignee and the items which I have in mind as em- [fol. 1007] braced in such accessorial service include these: the stacking of the goods for the benefit of the consignee, as distinguished from a mere piling of them for the convenience of the carrier; the sorting of the goods for some commercial purpose of the consignee; the display of the goods for some purpose that the consignee has in mind; or any use of the pier for auction services which we contend should be covered by a lease arrangement and could not possibly, on any theory, be embraced in the transportation rate of charge.

Now, I may have left something out, but if I have, it is done unintentionally.

Exam. Brown: You intend to include cooperage in the accessorial service?

Mr. LaRoe: Cooperage is clearly an accessorial service for which a separate charge is paid, or whether the charge is paid or not, it is an accessorial service.

Exam. Brown: You include that in your definition?

Mr. LaRoe: Of course, when you talk about cooperage, you are getting into the claim field, loss and damage to freight, and I would not know just how to classify that.

Exam. Brown: All right. We will leave that out then. Are you satisfied, Mr. Miller?

Mr. Miller: Yes, indeed.

Exam. Brown: All right, next witness.

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[fol. 1008] HOWARD HOUSTON was sworn and testified as follows:

Direct examination.

By Mr. Augello:

Q. Mr. Houston, will you give us your name and the firm you work for and your title?

A. My name is Howard Houston and I am traffic manager for Simons & French Co. of 99 Hudson St., New York City, which position I have occupied for 28 years.

Q. Previous to your employment with Simons & French, who were you employed with?

A. I was assistant secretary to what was then known as the National League of Commission Merchants for a period of four years.

Q. Prior to that?

A. Prior to that I was with the New York Central Railroad for a period of eight years, and the Lehigh Valley Railroad for a period of two years.

Q. Now, will you tell us just what commodities your company handles?

A. Our company handles fruits primarily, apples, pears, peaches, grapes, cherries—all the deciduous fruits.

Q. From what origins?

A. From California, Oregon and Washington, primarily.

Q. Are you a shipper, as well as a receiver?

A. We are.

[fol. 1009] Q. And approximately how many cars of fruits do you handle per year?

A. Approximately 2,500 cars annually.

Q. And what is your business as an exporter or importer?

A. We are not only local New York City distributors of fresh fruits, but we are also importers and exporters.

Exam. Brown: What do you mean, foreign exportations and foreign importations?

The Witness: That is correct.

By Mr. Augello:

Q. To what extent, Mr. Houston, do you export and import?

A. At the present time, our exports are extremely limited due to the world economic situation, but at the time of our peak handling of exports, we shipped as many as 150 carloads of fruit per week.

Exam. Brown: Straight throughout the year?
The Witness: That is correct.
Exam. Brown: How long ago was that?
The Witness: That is fully 20 years ago.

By Mr. Augello:

Q. And you are familiar with the handling of the unloading and the loading of cars by the railroads on export and import shipments of fruit?
A. I am.
Q. Will you please state for the record just how that is done?
A. Well, for example, we have a car arriving on the Erie [fol. 1010] Railroad in the Jersey City Terminal which is ordered for delivery to a steamer for export. The first move that is made is to have that car switched into the Jersey City Terminal. The fruit is then unloaded on to the pier.

Exam. Brown: Where?
The Witness: At Jersey City, by railroad labor. Then, if we specify that it is to be delivered in a refrigerated lighter, a refrigerated lighter is placed alongside the pier and by railroad labor the fruit is then trucked into this refrigerated lighter. After the loading of the lighter is completed, it is floated to the ship's side.
Exam. Brown: How does that hook into this case, Mr. Augello?
Mr. Augello: I will connect it, Mr. Examiner.
Exam. Brown: I wish you would. It seems a little remote.

By Mr. Augello:

Q. Then what would happen, Mr. Houston?
A. Then the fruit is unloaded from the lighter into the steamer.
Q. By who?
A. By railroad labor—no, pardon me, correction: the

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fruit is unloaded from the lighter into the steamer by labor employed by the steamship company.

Q. Now, what you just testified to is shipments for export, is that correct?

A. That is correct.

[fol. 1011] Q. And in that case, you stated the unloading from the car, from a refrigerated car at Jersey City on to the pier of the Erie Railroad and from the pier to a refrigerated barge, and then the barge floated alongside of the steamer, is all done on the through freight?

A. That is correct.

Q. Without any additional charge for both unloadings?

A. That is correct.

Q. Or any additional charge for the use of a refrigerated barge?

A. That is correct also.

Q. Now, will you please tell us what happens on the shipments, on an import shipment of fruit from a foreign country that you shipped out of New York to, say, Chicago, on the Erie Railroad?

A. In the case of an import shipment where we desire to ship carloads of fruit westbound, we so notify the railroad as to how many carloads we expect to have and what the destinations will be. The railroads take delivery of the fruit from the steamer, and there again, I believe that the unloading from the steamer is performed by labor employed by the steamship company.

Exam. Brown: You say you believe. Do you know?

The Witness: I believe I do not know that definitely.

Exam. Brown: Testify, please, as to what matters within [fol. 1012] your own knowledge.

The Witness: Yes. Then those cars are placed on the carrier's rails.

By Mr. Augello:

Q. Just a minute, Mr. Houston. I think there is a lapse there between the time that the steamship company unloads the fruit from the steamer to the time that the railroads get it. Will you please explain how they get it?

A. Well, of late years, there has been embargo against the use of railroad company's marine equipment for the

handling of import freight, so it has become necessary for importers to employ outside towing companies, and those outside towing companies will load their barges with the freight and take it to the railroad terminals for loading to cars.

Mr. LaRoe: Does it ever go over one of these piers that we are dealing with here?

The Witness: To my knowledge, no.

By Mr. Augello:

Q. And you stated "late years." How about the normal and usual method prior to the war years which you no doubt are referring to?

A. There was a time when, if we had an import shipment arriving, we will say, from Argentina, the railroad companies would put alongside, on carfloats, the required number of cars for our fruit, load them by their own labor alongside the steamer, float them to the auction terminal, [fol. 1013] our business being primarily at auction for local sales.

Q. And for that loading of the cars from the steamer, there was no charge made other than the transportation charge?

A. The transportation rate.

Exam. Brown: Mr. Augello, you are putting this type of testimony in for comparison purposes, is that it?

Mr. Augello: Yes, sir, to show on export and import fruits there is no charge for loading or unloading.

By Mr. Augello:

Q. Have you anything else, Mr. Houston, that you can tell us?

A. I do not think there is anything else I can add to that.

Mr. LaRoe: I should like to ask a few questions, please.

By Mr. LaRoe:

Q. Does all of your westbound freight move to Chicago and St. Louis; I mean, your freight from the west moves through Chicago and St. Louis?

A. Chicago and St. Louis, that is correct.

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Q. What are the railroads that you use east of those gateways?

A. Principally the Erie Railroad.

Q. To what extent do you use team-track deliveries?

A. We do not use it at all.

Q. Are all of your deciduous fruits handled over these piers?

A. That is correct.

Q. Are you allowed access to the carfloats?

A. No, we are not.

Q. Where do you first get delivery of your fruits?

[fol. 1014] A. On the pier floor.

Q. Does the railroad perform, free, any accessorial service of any type beyond the mere placing of the goods on the floor of the pier?

A. No, they do not.

Q. What are some of the services that are rendered on the floor of the pier in connection with your fruit after the railroads finish the simple delivery?

A. When the railroads finish the delivery, the sorting, which is charged for by the railroads and paid for by us, is done; then the fruit is removed from the floor of the pier after the auction sale is over and placed on our trucks.

Q. At your expense?

A. At our expense.

Q. Is there any accessorial service of any type, and by accessorial service I mean anything beyond the simple delivery rendered by the railroads, that you do not pay for?

A. Nothing.

Mr. LaRoe: That is all. Thank you.

Exam. Brown: Mr. LaRoe asked you with respect to movements from the west. Do you have any shipments from the south?

The Witness: Very, very rarely. We have had a few cars of oranges, occasionally, that arrived for delivery via the Pennsylvania Railroad.

[fol. 1015] Exam. Brown: How many would that comprise in a year? How many carloads of oranges?

The Witness: Not more than two.

Exam. Brown: What is the approximate breakdown between interstate shipments received by you and the export-import situation?

The Witness: At the present time, out of the total number of cars I mentioned that we handled, at the present time I would not say that there are more than 50 of those cars that we export.

Exam. Brown: And you stated you handled approximately 2,500 carloads a year?

The Witness: That is correct.

Exam. Brown: What was the situation in 1946?

The Witness: Approximately the same as it is now. It was not a bit easier with regard to exports than it is now.

Exam. Brown: Well, has the relative situation changed in the last 10 years?

The Witness: Not appreciably, no.

Exam. Brown: Well, most of your shipments are local interstate shipments in the sense that they originate in the United States and are delivered to you at New York?

The Witness: That is right.

Mr. Augello: Mr. Houston, I have a question that I should like to ask at this time.

[fol. 1016] By Mr. Augello:

Q. In the normal years, what was the percentage of the 2,500 cars that you handled normally in export and import, as compared with the domestic shipments?

A. When I said 2,500 cars, I was speaking of the past year, the past two years, harking back to the time that we did do a very considerable export business, the number of cars we handled was a great deal more than 2,500.

Q. Oh, they were? I am glad you mentioned that. How much more were they?

A. Well, I mentioned that we handled—we exported 150 carloads a week and that continued throughout the year. A great majority of that export business was made up of apple shipments from the south, and I would say that the percentage of the number of cars handled was fully 65 percent.

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Exam. Brown: And you testified, also, that that was 20 years or more ago.

The Witness: Yes, sir.

Exam. Brown: Have you had any such comparable situation during the last 20 years?

The Witness: Not since that time, no.

Mr. Augello: That is all.

Exam. Brown: You have some questions, Mr. Hoffman?

Mr. Hoffman: Yes.

By Mr. Hoffman:

Q. Mr. Houston, I believe you testified that the deciduous fruit handled by your company moving from points [fol. 1017] of origin to the Pacific Coast and coming to New York, is brought into New York by the Erie Railroad?

A. That is correct.

Q. And at what points in the course of the transcontinental haul does the Erie Railroad receive those cars?

A. They receive them at Hammond, Indiana, to be exact, at Lima, Ohio, and at one other point—I cannot recall at the moment.

Q. And prior to the time that the Erie has received those cars, would they be moving over lines of carriers located in Illinois?

A. Yes, some lines.

Q. Do you have any movement at all of fruits from the Pacific Coast moving into New York which would pass through St. Louis?

A. Yes, we do.

Q. Would that be exceptional?

A. It would be exceptional. Most of these shipments pass through Chicago or Hammond.

Exam. Brown: Do you use the same type of routing now as you did prior to the effective date of these schedules?

The Witness: We do.

Exam. Brown: You have not changed as a result of the increased charges?

The Witness: No, we have not.

Exam. Brown: You are still using Erie delivery and line

[fol. 1018] haul east of the gateways primarily?

The Witness: That is correct.

Exam. Brown: And how about your traffic from the south?

The Witness: We have very little, if any, traffic.

Exam. Brown: I understand you testified as to that, but when you get it, don't you use Pennsylvania Railroad?

The Witness: We use Pennsylvania delivery.

Exam. Brown: Any further questions on direct?

(No response.)

Exam. Brown: Cross examine.

Mr. Smith: I have no questions.

Exam. Brown: Mr. Miller:

Mr. Miller: Yes.

Cross examination.

By Mr. Miller:

Q. Mr. Houston, will you tell me roughly how many cars of import freight you handled this year?

A. We had—well, in carloads I would have to think a minute. We had a considerable quantity of fruit from Argentina. We also had some shipments from Brazil; all together—this is merely an estimate—I would say that we handled from 50 to 75 carloads.

Q. Where did you receive that freight?

A. It was sold at auction, 100 percent. We did not ship anything westbound this year.

Q. Where?

[fol. 1019] A. At the Erie Railroad, Pier 20, North River.

Q. Now, on these accessorial services that Mr. LaRoe asked you about, is any of your fruit from the west sorted on the piers?

A. It is all sorted.

Q. And you pay a charge for that service?

A. Yes, we do.

Q. Is there any accessorial service performed on your account on the piers for which you pay a charge, other than the unloading?

A. Nothing.

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Q. The only charges for any services rendered to you on the piers, then, is the unloading charge and the sorting charge?

A. The sorting charge, that is right.

Mr. Miller: That is all.

Redirect examination.

By Mr. LaRoe:

Q. Do the railroads perform any other service for you than that?

A. No, they do not.

Q. Why should there be any further charge, then? How could there be?

A. There could not be.

Exam. Brown: Is that a question of the witness or an observation, Mr. LaRoe?

Mr. LaRoe: A little of both. Incidentally, I hope Mr. [fol. 1020] Miller did not overlook answering my question of him, which was that he would, in the same way that I did, answer what services are performed and are not paid for by the consignee.

Mr. Miller: Now, I have no objection to arguing this case right now, but I do not think it is a proper time.

Mr. LaRoe: All right.

Exam. Brown: Well, Mr. LaRoe answered your question and he expects you to answer his. But, of course, nobody is going to require you to do it.

Mr. Miller: Well, now, if you are talking about the sum total of services and facilities furnished by the carriers at the pier stations, those includes the unloading, sorting and stacking, the cooperage, the furnishing of the station, the billing operations——

Mr. LaRoe: Billing operations?

Mr. Miller: (Continuing)——the notification of consignees as to location of freight in its course of transportation; all other normal agency services which occur at any railroad station; the furnishing of heat and light; the furnishing of auction rooms.

Mr. LaRoe: You haven't overlooked the furnishing of the freight car?

Mr. Miller: No. Your question was as to the services furnished at the station.

Mr. LaRoe: At the pier.

[fol. 1021] Mr. Miller: Yes. They perform the delivery.

Mr. LaRoe: What is that again?

Mr. Miller: They perform the delivery. They effect the delivery to the consignee.

Mr. LaRoe: I realize that we should not argue the case, but you are very frank in trying to answer my question. May I asked you if you take the position, for example, that billing should be paid for extra?

Mr. Miller: No, indeed; by no means.

Mr. LaRoe: You are not taking the position that in listing these things, they ought to be paid for extra?

Mr. Miller: No, indeed. That was not the question.

Mr. LaRoe: You would not claim that the consignee should pay extra for heat and light, for example, at the station?

Mr. Miller: Well, I will say this, that the heat and light, we are not charging for heat and light in this proceeding. We are charging for unloading.

Mr. LaRoe: Yes, I so understand. Well now, could I impose on you to try once more to answer what you think is performed in the way of an accessorial service in connection with the delivery of this freight that the consignees do not pay for.

Mr. Miller: What is performed in connection with delivery?

Mr. LaRoe: Accessorial service in connection with delivery that they do not pay for, or beyond the delivery. If it is [fol. 1022] accessorial, it would be beyond the delivery. They pay for the stacking; they pay for the sorting. What is it that you do for them that they do not pay for as a service in connection with this delivery that they ought to pay for?

Mr. Miller: I would say nothing.

Mr. LaRoe: All right, that is all. Thank you.

Exam. Brown: You neglected to refer to police protection.

Mr. Miller: That is right, sir.

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Exam. Brown: I think that is about the only possible element you omitted.

Mr. LaRoe: I am asked to move that the case be now dismissed, but I am not going to do it.

Exam. Brown: Any further questions of this witness?

(No response.)

Exam. Brown: You are excused.

(Witness excused.)

Mr. Miller: Mr. LaRoe, parenthetically, I would like to second the motion.

Mr. LaRoe: You would like to see our petition dismissed. You would like to have the charges dismissed.

Exam. Brown: Off the record.

(Discussion off the record.)

ROBERT C. NEILL having been previously sworn, testified as follows:

Direct examination.

[fol. 1023] Exam. Brown: Let the record show that the exhibits numbers 101 to 103, inclusive, have been identified off the record and marked accordingly.

(Protestant's Exhibits Nos. 101 and 102, witness Neill, and 103, marked for identification.)

Mr. Loos: Mr. Examiner, may we proceed?

Exam. Brown: Yes.

Mr. Loos: Mr. Neill has previously testified, Mr. Examiner, and, of course, we will not repeat any of his previous testimony, but I would like to call attention to the fact that the record shows that he is here representing the California Citrus League, which is an organization composed of the shippers and growers' organizations of California and Arizona who grow and ship more than 90 percent by volume of all of the citrus fruit produced in those two States, and he is speaking for that group.

By Mr. Loos:

Q. Now, Mr. Neill, at the previous hearing, you introduced as Exhibit No. 62 a history of rates on California-Arizona citrus fruit. Have you brought that up to date?

A. I have.

Q. And is that done in the document which has been marked as Exhibit No. 101?

A. It is.

Q. In stating the rates per hundred pounds in the second column of that exhibit, and using the first page for illustra-
[fol. 1024] tion, have you included in the rate per hundred pounds the unloading charge which became effective on November 1, 1948?

A. Yes, I have.

Q. And is that simply a computation you have made?

A. Yes. I reduced it to a 100-pound basis.

Q. That is not a rate so published in the tariff?

A. No. It is published on a per ton basis.

Q. And have you carried that through, at the rate of 100 pounds, in the subsequent lines for the periods following November 1, 1948?

A. That is correct.

Q. Now, do you recall that at the previous hearing held in July of 1947, the offer of the railroads to permit the shippers to perform the unloading from the carfloats to the pier?

A. Yes, I do.

Q. And following the Commission's decision in this proceeding, the decision of October 4, 1948, did the California Fruit Growers' Exchange make any effort to obtain permission from the carriers or the shippers as a group to perform the unloading service at these piers?

A. Yes, they did.

Q. What was the result of that effort?

A. That permission was denied.

Q. And was there an exchange of telegrams between the California Fruit Growers Exchange and the Erie Railroad on the subject?

[fols. 1025-1026] A. There was.

Q. And are copies of those telegrams shown in the document which has been marked Exhibit No. 102?

A. Yes.

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Q. Do those include all of the telegrams, to your knowledge, that were exchanged on that subject?

A. Yes.

Exam. Brown: You did not actually ask the carriers for authority to unload, did you? You merely asked them if it would be permitted.

The Witness: Well, we asked for permission to unload, to perform the unloading service for ourselves, yes.

Exam. Brown: That does not say so in these wires.

The Witness: Well, that was intended.

Exam. Brown: You asked merely if the shippers can unload.

The Witness: Well, we were asking for permission to perform this service.

Exam. Brown: That is the construction you placed on this telegram?

The Witness: Yes, sir.

Exam. Brown: Now, with respect to the alleged statements of the witnesses for the carriers, that they would permit shippers to unload, the record should speak for itself in that respect. I do not believe that there was an outright agreement in that regard, but as I say, the record must [fol. 1027] speak for itself in that respect.

Mr. Loos: Yes. I do not intend to characterize other than what the record may show. There is quite a bit of discussion about it on the record, and I think the offer is not entirely clear and far be it from me to have you clarify it at this late date.

Mr. LaRoe: May I suggest, Mr. Examiner, that the reply by Mr. Von Willer to the telegram shows that he interpreted it as a request by the shippers for permission to unload because he said it would not be practicable for him to do it. He had no difficulty in understanding the telegram.

Mr. Fitzgerald: Any doubt is clarified by a later exchange.

Exam. Brown: Mr. Weller merely stated that the "physical unloading by shippers would be impracticable." The inference might be there that shippers could not unload is a physical situation rather than a permissive one.

By Mr. Loos:

Q. Mr. Neill, was the California Fruit Growers Exchange

at that time endeavoring to work out an arrangement whereby the shippers, as a group, might perform the unloading in the hope of saving money by so doing?

A. Yes, they were.

Q. And as a result of this exchange of telegrams, did they gave up that effort?

A. They discontinued.

Q. In the Commission's decision of October 4, 1948, the [fol. 1028] statement is made at sheet 3, Mr. Neill, that most of the fruits and vegetables originating at western producing points, particularly in California, and destined to New York, are routed over the Erie. Does that situation still prevail with respect to your shipments?

A. Not to the extent that it did at that time.

Q. What has been the change that has taken place and when did it occur?

A. We recently, since early in September, have been routing a portion of our fruit for Pennsylvania delivery and New York.

Exam. Brown: Let us be a little more specific in this testimony. A portion of our fruit—I think it would be better if you could give us an approximation.

By Mr. Loos:

Q. Can you say how much of the deliveries at New York by the California Fruit Growers Exchange, and since this change was made early in September, have been delivered to the Pennsylvania?

A. Yes, I can. It so happens that we just figured that out yesterday and it is just slightly over 17 percent of our total deliveries.

Exam. Brown: As to the Pennsylvania Railroad?

The Witness: Pennsylvania Railroad.

Exam. Brown: And the balance, 83 percent, to the Erie?

The Witness: Correct.

Exam. Brown: That is the present situation?

[fol. 1029] The Witness: That was up to yesterday, from September 7th.

Exam. Brown: You are going to develop the prior situation, Mr. Loos?

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Mr. Loos: Well, I think the prior situation is adequately developed on the previous record.

Exam. Brown: Well, it is practically 100 percent, as I recall it.

The Witness: It was 100 percent.

Exam. Brown: So your testimony is now that approximately 17 percent has been diverted to the Pennsylvania Railroad.

The Witness: That is right.

Exam. Brown: And what period would that cover?

The Witness: From September 7th to September 26th.

Exam. Brown: Just one month, a little less than a month?

The Witness: A little less than a month.

Exam. Brown: All right, Mr. Loos.

By Mr. Loos:

Q. What was the reason for that change?

A. The congestion on the Erie Pier.

Q. Now, do you still object to the unloading charges that are in issue in this proceeding?

A. Yes, we do.

Q. And has there been anything that has occurred during your experience since the effective date of these unloading charges on November 1, 1948, that in any way lessens your objections to those unloading charges?

[fol. 1030] A. No, there has not been.

Q. What will be the effect upon the deliveries of California-Arizona citrus fruit by the California Fruit Growers Exchange if these unloading charges are permanently continued at New York?

A. Well, we will have to try to find some other means of delivering the fruit here to escape the payment of the delivery charges.

Q. And will that diminish the deliveries on the piers?

A. I would think it would.

Q. Now, have you made any such effort to change your delivery method to date?

A. No, we have not because we have been hopeful that these charges would be withdrawn. We tried, after the Commission's decision was issued, to get it postponed, and,

of course, we joined in asking that the case be reopened for this rehearing.

Q. And you are awaiting the result of this rehearing, are you, before you make any move toward a change?

A. Yes, we are.

Q. Did you hear the testimony of Mr. Laux and Mr. Hedden?

A. I did.

Q. And do you concur in what they have said?

A. Yes. I thought it was very well presented.

Q. Do you recall Mr. Hedden's testimony about the proposals for modernizing the produce terminals here in New York?

[fol. 1031] A. Yes, I do.

Q. Now, as a shipper representative, do you consider that modernization of the produce terminals in New York is a desirable thing?

A. I would say from a transportation standpoint it would be very desirable because it would probably give us additional means of reaching this market.

Exam. Brown: What do you mean by that?

The Witness: By water or by other railroads that are not serving the market.

By Mr. Loos:

Q. Going back to the change in routing, I meant to ask you on the deliveries to the Pennsylvania, the deliveries at the Pennsylvania pier, where are those delivered to the Pennsylvania Railroad?

A. Well, on the shipments that we are able to divert west of Chicago and St. Louis, the haul is either from Chicago or St. Louis. I think there have been some occasional diversions in Central Freight Association territory, and in that case they might be delivered to the Pennsylvania at Pittsburgh or some other junction in CFA territory, but it is our aim to give them their maximum haul.

Exam. Brown: Give whom?

The Witness: The Pennsylvania.

Exam. Brown: You still give 83 percent to the Erie. Your

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testimony there was with respect to the haul over the [fol. 1032] Pennsylvania only, as I take it, then?

The Witness: Yes. We do the same for the Erie. We do not attempt to short-haul any railroad. We give them the maximum haul wherever we can.

Exam. Brown: In other words, if you are going to have the Pennsylvania as a delivering line, you will give it to them as close to Chicago as you can?

The Witness: Right.

Exam. Brown: And the same is true with the Erie?

The Witness: That is correct.

Exam. Brown: We will have a short recess.

(A short recess was taken.)

Exam. Brown: All right, Mr. Loos.

Mr. Loos: That concludes the direct examination. I offer Mr. Neill's Exhibits 101 and 102.

Exam. Brown: How about 103?

Mr. Loos: I am going to take that up after Mr. Neill is finished. I want to take that up later.

Exam. Brown: I will receive Exhibits 101 and 102 without objection.

Mr. Miller: No objection.

Exam. Brown: They are received in evidence.

(Protestant's Exhibits Nos. 102 and 102, Witness Neill, received in evidence.)

Mr. Loos: That concludes the direct examination of Mr. Neill.

[fol. 1033] Exam. Brown: Off the record.

(Discussion off the record.)

Exam. Brown: Any further questions on direct with Mr. Neill?

Mr. LaRoe: Only one question.

By Mr. LaRoe:

Q. Mr. Neill, you speak for a very large volume of citrus fruit from the Pacific Coast, and I should like to ask you whether there is any accessorial service or any other collateral service in connection with this traffic beyond the

point of simple delivery that the railroads render that they do not get paid for.

A. Oh, no, there is not.

Mr. LaRoe: That is all.

Exam. Brown: Mr. Neill, these unloading charges, as such, became effective in 1948, is that right?

The Witness: November 1, 1948.

Exam. Brown: November 1, 1948?

The Witness: Right.

Exam. Brown: Was there any diversion to any extent between November 1, 1948, and September 7, 1949, to the Pennsylvania Railroad?

The Witness: Just as I have described it, since September—no, no diversion of the Pennsylvania Railroad.

Exam. Brown: You described the 17 percent diversion as applicable during a period from September 7 to September [fol. 1034] 26, 1949. Prior to that time, there was no diversion?

A. No, sir.

Exam. Brown: Is that all on direct?

(No response.)

Exam. Brown: Cross examine.

Mr. Smith: There is one question, Mr. Neill, I should like to clear up.

Cross examination.

By Mr. Smith:

Q. In response to a question from the Examiner, you stated that the unloading charges became effective November 1, 1948. It is correct, is it not, that the charges became effective on traffic initially billed on and after that day?

A. Yes, that is correct, on traffic bills of that date, not deliveries. But the tariff was effective November 1.

Mr. Smith: That is all I have, Mr. Examiner.

Exam. Brown: Mr. Miller, do you have any questions?

Mr. Miller: No, sir.

Exam. Brown: Any further questions of this witness?

(No response.)

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Exam. Brown: That is all, Mr. Neill. Thank you.

(Witness excused.)

Mr. Loos: Mr. Examiner, in reference to the document marked 103, that consists of extracts from testimony of carrier witnesses in several proceedings dealing with this [fol. 1035] New York situation, and the purpose is to show that the position of the carriers from 1909, the date of the first hearing, from which there is an extract, to April, 1947, the date of the last hearing, from which an extract is presented, was continuously that this unloading service had to be performed by the carriers because of the physical disabilities in the New York situation. I am not attempting to characterize by what I am saying what these witnesses testified. That testimony will speak for itself.

Now, pursuant to Rule 82 of the Commission's Rules of Practice, I have prepared true copies of these extracts from the records of the Commission, and I prepared them in the form of an exhibit, and I submit them as an exhibit.

Exam. Brown: Any objection?

Mr. Smith: Mr. Examiner, on that point, if Exhibit 103 is received, I should like for you to afford the Respondent the right, within, say 10 days after the close of this hearing, to decide whether there are any other extracts from these particular cases that we might want to submit by way of clarification or expansion. I haven't had an opportunity to study these extracts yet, and, of course, I haven't read the dockets that the exhibit refers to.

Mr. Loos: That will be entirely satisfactory, Mr. Examiner.

Exam. Brown: Other than that, you have no remarks to [fol. 1036] make in connection with this exhibit?

Mr. Smith: No, sir.

Mr. Miller: I have one remark, namely, that in the half a second I had to run through this exhibit, it appears to me clearly that it does not prove what Mr. Loos has stated that it does prove.

Mr. Loos: Oh, Mr. Examiner, I beg to differ with the statement just made by Mr. Miller. I specifically said I was not attempting to state what the witnesses had stated.

Mr. Miller: Yes.

(Witness excused.)

BERNARD A. EGAN was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Will you please state your name and residence?
A. Bernard A. Egan, Mountainville, New Jersey.
Q. What is your business, Mr. Egan?
A. General manager of Egan-Fickett & Co. Inc., distributors of citrus and deciduous fruits.
Exam. Brown: Now say that over again. Say it good and loud so they can hear it all the way back at that curtain there.
A. Egan-Fickett & Co. Inc.

By Mr. Wells:

Q. What is the nature of the business of Egan-Fickett & Co.?
A. Primarily distributors of citrus and deciduous fruits. [fol. 1040] Q. Do you also grow some of the fruits that you distribute?
A. Yes, sir.
Q. You are the manager of the New York City office?
A. Yes, sir.
Q. As such, how long have you been familiar with the methods and deliveries of citrus fruits from Florida, for example, in New York City?
A. Since 1937.
Q. Continuously during the intervening years?
A. Yes, sir.
Q. What is the approximate volume handled by you in New York City in carlots?
A. Between 1,500 and 2,000 carloads of citrus.

Exam. Brown: How many?
The Witness: Between 1,500 and 2,000.
Exam. Brown: I still did not get it.
The Witness: Between 1,500 and 2,000 cars.

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Mr. Wells: Of Florida citrus.

By Mr. Wells:

Q. Do you know whether or not all of the Florida citrus is sold by auction or is some of it sold in other ways in New York City?

A. Some of it is sold at private sales in New York and others by auction.

Q. Is there any difference in the service rendered by the railroad company in making delivery of the citrus fruit [fol. 1041] from Florida in New York City as between that sold at auction and that sold at private sale?

A. No, sir.

Q. At what point is delivery made?

A. When the fruit is unloaded from the cars and dumped in one lot, carlot lots on the pier.

Q. At the time when it is first available for you to take delivery?

A. That is right.

Q. After the point at which it has been unloaded from the cars on the carfloats and placed at a spot on the pier, is there any additional service rendered to that fruit by the railroad?

A. No, sir.

Q. Whatever additional may be done, by whom is it done?

A. It is done by contract employees of our company, in our case.

Q. And paid by you, in addition to the line haul and transportation charges?

A. Yes.

Q. So that it does not enter in any wise to the transportation service rendered by the railroad?

A. That is correct.

Q. Do you handle any vegetables, Mr. Egan?

A. No, sir.

Q. Just the citrus fruit from Florida?

[fol. 1042] A. A few Georgia peaches.

Exam Brown: The witness testified he handled deciduous fruits also.

Mr. Wells: He said and peaches from Georgia.

The Witness: Yes, sir.

Exam. Brown: Well, you testified as to 1,500, 2,000 carloads of Florida citrus.

The Witness: Yes, sir.

Exam. Brown: Now, that does not cover the deciduous fruits. I should like to know something about that.

By Mr. Wells:

Q. What is the volume of deciduous fruits that you handle?

A. A small volume in New York. Most of our deciduous handling is in carlot sales. We would not run over 100 cars on peaches.

Exam. Brown: Peaches?

The Witness: Yes, sir.

Exam. Brown: And when you are referring to deciduous fruits, you include peaches only?

The Witness: Yes, sir.

Exam. Brown: You do not get any from California?

The Witness: No, sir.

Exam. Brown: No citrus from California?

The Witness: An occasional car, that is all.

Exam. Brown: How many a year?

The witness: Oh, it might be five cars in a year.

[fol. 1043] By Mr. Wells:

Q. Is there any opportunity afforded to you by the railroad of unloading the car that is floated to the North River Pier?

A. No, sir.

Q. The first time it is available to you is after it is unloaded by the rail employees?

A. That is right.

Mr. Wells: That is all on direct, Mr. Examiner.

By Mr. LaRoe:

Q. Do you use team track delivery at all?

A. No, sir, not ourselves. We have sold the people that use the team track delivery.

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Q. I am talking about what you do.
A. No, sir.
Q. How are the peaches handled, over the same route that north of Potomac Yards handle the citrus?
A. Yes, sir.
Q. On the peaches, do the railroads make the simple pier delivery?
A. Yes, sir.
Q. And they do not render any service beyond that that you do not pay for?
A. No, sir.

Mr. LaRoe: That is all.
Exam. Brown: The delivery north of Potomac Yards is through Pennsylvania Railroad Company?
[fol. 1044] The Witness: Yes, sir.
Exam. Brown: Exclusively?
The Witness: Yes, sir, with very, very few exceptions. Occasionally, a car will come in out of route or something. It is practically 99-9/10ths percent Pennsylvania.
Exam. Brown: Mr. Wells?
Mr. Wells: That is all.
Exam. Brown: Cross examine.
Mr. Smith: I have no questions, sir.
Exam. Brown: Mr. Miller?
Mr. Miller: No questions.
Exam. Brown: That is all, sir.

(Witness excused.)

Gordon Stedman was sworn and testified as follows:

Direct examination.

Mr. Wells: May we have the exhibit consisting of four pages numbered as 104?
Exam. Brown: One exhibit?
Mr. Wells: Yes, sir.
Exam. Brown: Let the record show that Exhibit No. 104 has been distributed to the parties and has been marked for identification.

(Protestant's Exhibit No. 104, witness Stedman, was marked for identification.)

[fol. 1045] By Mr. Wells:

Q. Please state your name and residence.

A. My name is Gordon Stedman. My residence is 45 West Central, Orlando, Florida, and I am secretary-manager of the Growers and Shippers League of Florida.

Q. State briefly your transportation experience.

A. I have been associated with national associations concerning transportation of fresh fruits and vegetables since 1927.

Q. Mr. Stedman, will you briefly explain the first sheet of your Exhibit 104?

A. The first sheet of Exhibit 104 is a statement showing the total unloads of fresh citrus fruit originating in Florida, shipped to New York City, and the total number of carloads sold at auction, and the percentage of those carloads to the total carloads received in New York City.

Q. Under the first column headed "season," is that the period from September 1 through August 31 of the following year?

A. That is.

Q. Did you obtain the figures as to total carloads by rail to New York City from the same source mentioned by Mr. Pease in his testimony?

A. That is correct, yes.

Q. So that the New York delivery, Erie, includes the same that he testified to?

A. It does. I might say the only difference between these figures and those given by Mr. Pease is that the [fol. 1046] *figures and those given Mr. Pease are that the* figures in Exhibit 104 are on a season basis, where the figures given by Mr. Pease are on an annual basis.

Q. Is there any additional comment necessary by you on page 1?

A. I do not believe so.

Q. Is page 2 of Exhibit 104 similar to the first page except for Philadelphia delivery?

A. It is.

Q. And Philadelphia auction sale?

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A. That is right.

Q. What comment do you have with respect to page 3 of Exhibit 104?

A. Page 3 is a statement showing the unloads of Florida citrus fruits and vegetables by rail and truck at New York City for the 1937-48 and 1948-49 seasons. It also shows the total shipments from Florida to all destinations by rail and truck for the same seasons.

This exhibit is in supplemental form. It is pages 2 to 7, inclusive, of Exhibit No. 38, introduced by Witness O'Rourke in the prior proceeding, and it simply brings that exhibit up to date.

Q. When you say the prior proceeding, you mean the prior hearing in this proceeding?

A. The prior hearing in this proceeding.

Q. From that sheet which you have just been explaining, [fol. 1047] it appears that the truck unloads of citrus increased from 90 in the 1947-48 season to 1,358 in the 1948-49 season.

A. That is correct.

Q. Do you know whether or not the imposition of the unloading charge at New York effective November 1, 1948, has any bearing on that change?

A. I would say that it had.

Q. Do you have any further comment with respect to page 3?

A. No. I believe the balance of it is self-explanatory.

Q. Is page 4 similar to page 3 with the exception that it deals with Philadelphia?

A. It is.

Q. Do you have anything additional to add, Mr. Stedman?

A. I believe that is all, except that as far as Florida vegetables are concerned, very few of them are sold at auction except tomatoes.

Q. In other words, you are speaking now of New York and Philadelphia?

A. New York and Philadelphia.

Q. And the deliveries of the vegetables from Florida at New York and Philadelphia is for sale other than at

auction with the exception of tomatoes which you mentioned?

A. That is right.

Q. And the figures of percentage sales of Florida citrus by auction is as shown in your Exhibit 104?

[fol. 1048] A. That is correct.

Mr. Wells: I offer Exhibit 104 in evidence.

Exam. Brown: Any objection?

Mr. Smith: No objection.

Exam. Brown: Exhibit 104 is received in evidence.

(Protestant's Exhibit No. 104, witness Stedman, received in evidence.)

Exam. Brown: Off the record.

(Discussion off the record.)

Mr. Wells: The witness is available for cross examination or further direct, as the case may be.

Mr. LaRoe: I have no questions.

Exam. Brown: Cross examine.

Cross examination.

By Mr. Miller:

Q. What is the season you refer to in your exhibit, Mr. Stedman?

A. September 1st to August 31st.

Mr. Miller: That is all.

Exam. Brown: You are excused, Mr. Stedman. Thank you.

(Witness excused.)

Exam. Brown: Off the record.

(Discussion off the record.)

Exam. Brown: We will take a short recess.

(A short recess was taken.)

[fol. 1049] Joseph G. Papa was sworn and testified as follows:

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Direct examination.

By Mr. Kaplan:

Q. Mr. Papa, are you a member of the Industry Committee for the Improvement of Washington Market?

A. I am.

Q. What position in that committee do you hold?

A. Chairman of the executive committee.

Q. Have you been authorized by the Industry Committee to appear at this hearing?

A. I have.

Q. In addition to being chairman of the executive committee of the Industry Committee for the Improvement of Washington Market for which committee you appear, do you hold any other position?

A. I am president of Local 202 of the commission drivers and chauffeurs union, affiliated with the International Brotherhood of Teamsters of the American Federation of Labor.

Q. Speaking generally, what is the jurisdiction of commission drivers and chauffeurs union, Local 202?

A. It has jurisdiction over all fruits, vegetables, butter, eggs, cheese and cream.

Exam. Brown: You mean the transportation of them by truck?

The Witness: The jurisdiction over those commodities [fol. 1050] insofar as it concerns loaders, porters, salesmen, drivers, helpers, checkers and coopers.

By Mr. Kaplan:

Q. For how long have you been president of Commission and Drivers and Chauffeurs Union, Local 202?

A. Since May, 1940.

Q. Now, have you been authorized by the Industry Committee to appear here and pursuant thereto have you prepared a statement which you wish to incorporate in the record?

A. Yes, I have, and I have a statement here which I wish to read into the record.

Q. Will you proceed with the statement?

therefore I think an objection to its continuance should be honored at this time.

Exam. Brown: There are several factual statements made in this.

The Witness: You can ask me questions after.

Exam. Brown: Just a moment, please. There are several factual statements made in this prepared testimony. There is considerable argument in it, also.

Mr. Miller: It actually makes very little difference to me whether the witness goes into the argument or not, so long as it is understood on all hands that it is entirely an argumentative statement.

Exam. Brown: It is not entirely argumentative. There are several factual statements in it, as you will see as it [fol. 1064] goes along.

Mr. LaRoe: Mr. Examiner, during this interruption, may I say the Mayor has arrived and it will be serving his convenience if there be an interruption before you rule on this matter.

Exam. Brown: Very well.

(Witness excused.)

Mr. McGrath: Mr. Examiner, may I note my appearance as corporation counsel of the City, John P. McGrath.

Exam. Brown: Corporation counsel, City of New York?

Mr. McGrath: Yes, sir.

Mayor William O'Dwyer was sworn and testified as follows:

Direct examination.

By Mr. McGrath:

Q. Mr. Mayor, are you the Mayor of the City of New York?

A. Yes, sir. I am William O'Dwyer, Mayor, City of New York.

Q. Mr. Mayor, did it come to your attention in October of 1948 that the Interstate Commerce Commission had made a decision authorizing the imposition of an unloading

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charge on produce coming through the pier stations of the City of New York?

A. It did.

Q. And when you learned of the imposition of this unloading charge, did you take any steps?

[fol. 1065] A. I did.

Q. As Mayor of the City with respect to seeking a hearing?

A. I did. I consulted with the Port Authority and I asked you, as corporation counsel, to join with them in asking to have the case reopened.

Q. Now, did you do that on the basis of any interest that you conceived the City to have in connection with this decision?

A. I did.

Q. Will you explain what interest the City of New York has in these proceedings?

A. No. 1, in the case of the three railroad companies that are involved in hauling produce here we have about 100,000 cars of produce a year. Under the new arrangement, where the railroad does not deliver the produce to the consignee, where he compels, under the new ruling, the consignee to go in and pay for something that I believe is the railroad's job, and that is delivered to him from the car to a place where he can pick it up, that imposes something between $26 a car and $36 a car of an additional tax in the cost of that food to the City. That runs into about a three million dollars bill, an extra bill the consumer in our City has to bear.

More than that, if this ruling is permitted to stand, we in New York City can expect to have it applied to every pier in the entire City.

At the present time, we are proposing to rehabilitate our [fol. 1066] piers at a cost of about $78,000,000. Our plans have been approved, those that have been drawn, and the other plans are on the drawing board.

We are waiting for a vote on an amendment this coming November, to see whether or not it is not possible for us to get $68,000,000 of that released from the present debt, and to use it for that purpose.

Now, if this ruling is permitted to stand, it will have

the effect of placing a tax on every piece of merchandise shipped through our port, both coming in and going out, and it will place our port at such a great disadvantage to the shipper or the receiver that it is bound to do irreparable damage to our waterfront, and if it does that, it does irreparable damage to our City.

If it has the effect of favoring other ports in the shipment of merchandise, it will have the effect to that extent of making an inland town out of New York City.

As best as I can find the figures, the basic economy of this City, the contribution of our waterfront, is anywheres from 25 to 40 percent of our basic economy, and if we are going to have to leave our piers in their present condition—and they certainly were in bad condition when we took them over, and they still are—if we do not rehabilitate them, we might as well say that we have seen the end of New York City as a major port.

[fol. 1067] This one ruling extended to the other piers will do that kind of harm to the City. So that, Mr. McGrath, I am interested in this from the City's viewpoint. I think it is something that the Interstate Commerce Commission should reconsider before they draw a blue pencil on the map known as New York City and say, "We are going to wipe you out." That is the position we are facing.

Now, it is bad enough to have to take an additional load of $3,000,000 on our food cost every year, but to then go into a rehabilitation program that will take six to seven years to put us in a position where we can meet normal competition with the other ports, gulf ports, Philadelphia, Baltimore—to say to us that we, due to this—we go in and spend $78,000,000 to rehabilitate it, at a time when we are going to be crushed by this unnecessary impost, this impost that has changed the method of doing business in this port that has consistently been the rule in this port for 50 years, if that is going to happen, we will have to revise our thinking about the expenditure of $78,000,000.

Q. Does it also have an impact, Mr. Mayor, on the contemplated plans for the rehabilitation of Washington Market?

A. When we came into office on January 1st, 1946, there

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were plans for a new market, almost at the present site of Washington Market that, on a basis of 1946 prices, would run into about $40,000,000.

[fol. 1068] Well, as everybody knows, construction prices went up to a point where the same plans would have cost more than $60,000,000 if we had built it.

Now, the hauling of our merchandise into that market, under the plan that has been followed consistently for half a century, will place us at this disadvantage: that unquestionably the consignees, rather than pay this impost, would go over to the Jersey side and would make that the final unloading point, the point of delivery, and you could have the Taj Mahal down there and they still would not come into the New York side.

Q. Do the pier stations in lower Manhattan and the operations in Washington Market include the handling of produce which is destined for points outside the City of New York as well as those inside?

A. Yes, certainly. I am not familiar with the actual figures, but I think there is about 25 percent of merchandise, of foodstuffs that come into New York that are shipped to other points. That was, again, a part of the great produce that we had.

Q. Is it your position, Mr. Mayor, that the unloading service is an integral part of the railroad's contract of charge, and hence is included or should be included in the line haul rate?

A. As I understand it, when you ship something, we will [fol. 1069] say, from California, from Texas, from some point in between, the contract with the railroad is that they will deliver that to the consignee. In this present setup, the consignee cannot get anywhere near their cars, and it has been the custom of the railroads to deliver it to the consignee where he can pick it up and haul it away.

Under the present setup, the railroads got to go in and bring it out to the consignee, only now, the railroad charges for what has been and still is their job, and we pay the bill in New York City, about $3,000,000 extra cost to our foodstuffs.

Q. Is it your position as Mayor of the City of New York

that this unloading charge places a discriminatory burden on the consumers of New York City?

A. It definitely does.

Mr. McGrath: I have no further questions.

Exam. Brown: Any further questions on direct examination?

Mr. LaRoe: No questions.

Exam. Brown: Any cross examination?

Mr. Smith: I have no questions, Mr. Examiner.

Mr. Miller: Yes, I have one.

Cross examination.

By Mr. Miller:

Q. Mr. O'Dwyer, if it were shown that this charge or similar charges are assessed for performing the same service at all points where the railroads do provide the service, I take it you would withdraw your opposition, is that [fols. 1070-1072] correct?

[fols. 1073-1114] The Witness: If what the gentleman means is that some other community would take our condition lying down, would I take it lying down, the answer is no.

[fol. 1115] Proceedings of September 28, 1949

D. W. Ward was sworn and testified as follows:

Direct examination.

By Mr. Fitzgerald:

Q. Will you state your name, address and business affiliation?

A. D. W. Ward, general manager, Philadelphia Terminals Marketing Association; address, business, 208 Walnut Street, Philadelphia.

[fol. 1116] Q. What is the Philadelphia Terminals Marketing Association, Mr. Ward, and of what or whom is it composed?

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A. The Philadelphia Terminals Marketing Association is composed of 54 individuals, partners or corporations, handling carlot receipts of fruits and vegetables in the Philadelphia market.

Q. Now, when you say fruits, Mr. Ward, does that include or exclude citrus fruits?

A. That, for the proceeding, will, in a sense, exclude fruits since the auction receivers will be represented in another manner.

Q. Do I understand it, then, that some of the members of the association of which you are general manager may also be members of an association of auction receivers?

A. That is correct.

Exam. Brown: You, at the present time, are not testifying with respect to citrus fruits, is that right?

The Witness: That is right.

By Mr. Fitzgerald:

Q. Mr. Ward, what proportion of the vegetables, and by vegetables I take it from what you have just said that we can include fruits other than citrus, in part, at least, what percentage of such commodities received in the Philadelphia market are received by the members of your association?

A. Approximately 97 percent of all vegetables received [fol. 1117] in the Philadelphia market, excluding that which goes to chain stores.

Q. Now, Mr. Ward, would you explain briefly the method of doing business of the receivers and the territory in which they operate?

A. The receivers act either as commission men or handle on direct consignment by outright purchase carloads of the fruits and vegetables, primarily fruits, and the majority of such receipts, I would say at least 95 percent, are handled at the Pennsylvania Produce Terminal.

Q. Now, do they sell only in Philadelphia or over what territory do their sales reach?

A. I would estimate that approximately 40 percent of their receipts are distributed to wholesalers in points outside of Philadelphia within a radius of 100 to 150 miles.

Within the City of Philadelphia they serve about four to five, between four and five thousand individual retailers.

They also sell to jobbers who transfer the commodity from the produce terminal to the Dock Street area.

Q. Now, Mr. Ward, I direct your attention to the fact that the tariff relating to the unloading charge hearing question refers to three Philadelphia stations, namely, the Pennsylvania Produce Terminal, the B&O Terminal, 31st and Chestnut Street.

Will you explain with reference to those three stations what the operations of the members of your association are?

[fol. 1118] A. As previously stated, at least 95 percent of the receipts to the members of our association are handled at the Pennsylvania Produce Terminal. 31st and Chestnut Street is no longer used except on rare occasions other than for consignments to chain stores. The B&O terminal facilities are not generally used for the delivery and receipt of fruits and vegetables—of vegetables.

Q. So that, as to the members of your association, their operations are almost exclusively then involved at the Pennsylvania Produce Terminal?

A. That is correct, and has continued as that since the opening of the terminal in 1927.

Q. Now, Mr. Ward, will you explain briefly the method of operation of the receivers at the Pennsylvania Produce Terminal with reference to the method of sale and so forth?

A. The receivers have two methods of handling and selling vegetables. The commodities generally referred to as dry vegetables, such as potatoes and onions and to some extent crated melons and tomatoes, at one time were unloaded on the BD boat platform, which is approximately 800 foot long and——

Q. Mr. Ward, excuse me, before you go into a precise description of the facilities of the terminal, in general, would you say that their method of operation at the terminal was that a part of their goods was unloaded and sold after unloading and part was sold by sample?

[fol. 1119] A. Yes. I had not reached the second stage, which deals with the top-iced vegetables, which customarily are delivered from team track and are sold from samples

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which are removed from the cars and brought on to the BD boat platform for display or for sale.

Q. Well now, so that your explanation will be clearer, will you describe briefly the facilities at the produce terminal from the standpoint of the receivers of vegetables?

A. From the vegetable receivers' standpoint, we have a platform facility which is stated to be 800 foot in length and 100 foot in width. However, I think only about 650 foot of the length is available for unloading. This is immediately adjacent, separated by one building only, to a team track which is composed of 16 tracks each accommodating about 25 cars, capacity of the yard at the present time being 400 cars.

The team tracks are laid out with tracks adjacent to each other, separated by an inspection platform, and each pair of tracks is separated by a driveway which measures 65 foot from rail to rail.

Q. Now, Mr. Ward, you have testified that the capacity of that track is about 400 cars. Are you aware of the fact that Mr. Hampton in a previous hearing in this case testified that the capacity of that team-track facility was 510 cars?

A. I am.

[fol. 1120] Q. Will you explain your answer in the light of that?

A. Originally the railroad had one additional track which is outside of the yard proper, that is, to the east side of the yard adjacent to another platform which is now taken over by hard freight.

Q. When you say hard freight, what do you mean?

A. That is the South Philadelphia freight station, package freight. The method of using the freight station and the vehicles and the vans and trailer tracks backed up to it have made the use of track No. 13 impracticable from a vegetable delivery viewpoint.

I think the railroad contended the track, when originally made, would accommodate around 30 cars, but by actual count, due to the shortening of some of the tracks, and also probably the increased length of cars since the yard was

built, 25 cars per rail will fill the track from the front end to the back end of the yard where a road cuts across making access from driveway to driveway, so you actually have 16 tracks with a capacity of 25 cars per track.

Q. You have made that count yourself?

A. Yes, recently.

Q. Now, Mr. Ward, what, briefly, is the background of the construction of the Pennsylvania Produce Terminal?

A. Well, prior to 1927, fruits were distributed from the piers on the Delaware River opposite the Dock Street area. [fol. 1121] The cars were either floated into these piers and unloaded or moved in over the Delaware Avenue street. The vegetables were delivered at 31st and Chestnut Street, which is the other side of the City, or at a few small yards in the northern section, north of the Dock Street area, Willow and Noble Streets, and some small yards of that nature.

In 1927, both the Baltimore & Ohio, Reading and Pennsylvania, in the interest of controlling, shall I say, the fruit and vegetable industry in Philadelphia, went into the construction of then-modern terminals, either one of them capable of meeting the accommodations of the trade in Philadelphia.

Q. These terminals then were in competition and not adjunct?

A. They were in competition with each other. They are located a half a mile apart and they are some distance removed from the Dock Street wholesale area.

Q. When you said the Dock Street wholesale area, will you explain what you mean by that?

A. Dock Street is historically the center of the distribution of fruits and vegetables in Philadelphia from a wholesale viewpoint. It is the first location of that industry and still remains at that point. There are approximately 150 to 200 wholesale houses in this area, and their source of supply is either from the rail terminals or from trucks.

Q. What is the approximate distance of Dock Street from these terminals?

[fol. 1122] A. I would estimate—I have never measured—3½ miles, maybe 4.

Q. Do I understand you to say that prior to 1927 Phila-

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delphia had its own carfloat method of delivery of fresh fruits and produce?

A. No. I said that the fruits were auctioned on piers on the Delaware River, opposite the Dock Street area. To the best of my knowledge, the B&O floated—the B&O and Reading had to use carfloats to get their offerings at that point. The Pennsylvania had to move them up Delaware Avenue on a switch line, and I am told that while I was not there at that time, that in the event of bad weather or some tie-up on the rails, they would revert to the use of carfloats to get their offerings to the piers. That was an exception.

Mr. Fitzgerald: Now, at this time, Mr. Examiner, I wish to offer in evidence the three photographs which I have already shown to Mr. Miller here, which photographs have to do with the team-track facilities at the Pennsylvania Produce Terminal. I have assured Mr. Miller that I will see that he and his associate counsel are furnished copies within the next couple of days.

Exam. Brown: Will you furnish copies to the Examiner, also?

Mr. Fitzgerald: Yes, sir.

Exam. Brown: Any other parties who wish copies of these [fol. 1123] exhibits, please contact counsel during the course of this hearing.

(Protestant's Exhibits Nos. 106, 107 and 108, Witness Ward, marked for identification.)

Exam. Brown: Off the record.

(Discussion off the record.)

By Mr. Fitzgerald:

Q. Mr. Ward, I show you a photograph which has been marked for identification as Protestant's Exhibit 106 and ask you what it is?

A. It is a photograph of a yard condition at the Pennsylvania Produce Terminal, Philadelphia, Pennsylvania, taken a week ago Monday, whatever date that is—September 19th.

Exam. Brown: Any particular reason for introducing that exhibit?

Mr. Fitzgerald: The purpose of this exhibit is to show the adequacy or inadequacy of the driveways between tracks

and the fact that they can be blocked by attempts to unload.

Exam. Brown: You say it is to show the inadequacy? Are you trying to show both?

Mr. Fitzgerald: Sir, I did not intend to argue the point at this time.

Exam. Brown: We want to know what is the worth of this exhibit and what it is introduced for. What is it supposed to show?

Mr. Fitzgerald: Specifically, it is supposed to show, if [fol. 1124] the Examiner please, that these 65 foot driveways under modern conditions and in the light of modern equipment are inadequate to prevent the orderly and efficient withdrawal of produce from cars at team track in Philadelphia.

Exam. Brown: That is a statement of counsel. Does the witness concur with his statement?

The Witness: I do, sir.

Exam. Brown: Take the next exhibit.

By Mr. Fitzgerald:

Q. I show you a paper marked for identification as Protestant's Exhibit 107, and ask you what it is.

A. This is also a photograph of the Pennsylvania Produce Terminal taken on September 19, 1949, and brings out the same conditions as portrayed in Exhibit 106.

Q. From a pan*amora* viewpoint?

A. Yes.

Q. Now I show you a photograph which has been marked for identification as Protestant's Exhibit 108 and ask you what it is.

A. This is a photograph of the Pennsylvania Produce Terminal, a panorama view of the gates at the front end of the yard before the trucks were admitted. It serves no purpose other than just a viewpoint of the congestion on Oregon Avenue prior to the opening of the yard.

Exam. Brown: The purpose of the exhibit is to show congestion outside of the yard?

[fol. 1125] The Witness: Yes.

Exam. Brown: Any objection?

Mr. Miller: No objection.

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Exam. Brown: They are received, Exhibits 106 to 108, inclusive.

(Protestant's Exhibits 106 through 108, inclusive, Witness Ward, received in evidence.)

By Mr. Fitzgerald:

Q. Now, Mr. Ward, I think for convenience we can describe the commodities received by the members of your association in two big categories: top-iced vegetables and dry vegetables.

As to top-iced vegetables—is that correct, by the way?

A. Yes. It will include, in dry vegetables, a certain amount of fruits such as peaches and melons, crated melons.

Exam. Brown: All fresh fruits?

The Witness: Yes, sir.

By Mr. Fitzgerald:

Q. Now, as to top-iced vegetables, what is the method of handling them at the Pennsylvania Produce Terminal?

A. The doors are opened by consignees' employees in the morning and samples withdrawn in the amount of 10 to 25 packages.

Q. Where is the car at the time it is examined?

A. From the car which is located on team track in the yard adjacent to the terminal facilities platforms. These packages are then trucked over to the B platform or pier, [fol. 1126] and lined up, displayed for sale from samples.

Q. Who removes those samples from the cars and who trucks them to the platform?

A. They are removed by truckmen employed by the consignees and trucked likewise by the same party to the platform. The consignee progresses his sale from these samples at 7:15, starting at 7:15 in the morning, and after sale, the sales slips are tendered to the truckmen who are employes of the receiver, who in turn go to the cars and remove the commodity from the cars to their trucks for delivery either into the market area or outside the Philadelphia district.

Q. Do any railroad employes handle the packages at any time during the operation that you have just described?

A. No.

Q. Isn't it a fact that top-iced vegetables, with insignificant exceptions, are not and never have been unloaded?

A. It is very rare for the consignees to order top-iced vegetables unloaded on platforms in Philadelphia.

Q. Now, the operation you have described is the same as it has been over the past years, both before and after November 1, 1948?

A. That is right.

Exam. Brown: These are operations on team tracks, are they not?

The Witness: Yes, sir.

[fol. 1127] Exam. Brown: And there is no unloading charge assessed for that unloading, is there?

The Witness: No, sir.

Exam. Brown: The shippers or the receivers perform those duties themselves?

The Witness: That is right.

Exam. Brown: Do you use the facilities of the carrier, however, in the unloading and displaying of the samples on the platform?

The Witness: That is right. The area of probably 150 feet, depending on the volume, is turned over for that purpose.

Exam. Brown: That is purely team-track delivery, is it not?

The Witness: Purely.

By Mr. Fitzgerald:

Q. Now, to clarify one part of the Examiner's question, facilities of the carrier are used not for delivery, I believe, but merely for placing the packages, that is, for the display of the packages on the platform?

A. That is correct.

Q. The placing, the sampling, all parts of the handling of those packages is done by employees of the consignee?

A. That is right.

Q. Now, as to dry vegetables——

Exam. Brown: Be careful you do not confuse dry vegetables with dried vegetables.

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Mr. Fitzgerald: No, sir. This is as distinguished from [fol. 1128] top-iced vegetables.

Exam. Brown: I am drawing a further distinction between dried vegetables and the vegetables you are referring to as dry vegetables.

Mr. LaRoe: You have not referred at all to dried vegetables, have you?

Mr. Fitzgerald: No.

Mr. LaRoe: Yes.

Mr. Fitzgerald: And, Mr. Examiner, we are referring only to perishable vegetables and the fresh vegetables and the fruits other than citrus that the witness has described.

Exam. Brown: I understand. I am just trying to make the record clear.

Mr. Fitzgerald: To clarify the record, this applies in no case to dried vegetables.

By Mr. Fitzgerald:

Q. Now, will you describe the operation as to vegetables other than top-iced which we characterize as dry vegetables prior to November 1, 1948?

A. Prior to November 1, 1948, commodities such as potatoes and onions, tomatoes, crated melons, to some extent, cabbage, turnips, were in the majority of instances placed adjacent to the platforms, platform B, and unloaded in full on the platform from which sale would be made whereby the buyer could view the entire carlot and take delivery at that point.

Q. How was this unloading operation performed and by whom?

[fol. 1129] A. The unloading operation was performed by the delivering carrier, at this point, the Pennsylvania Railroad.

Q. Will you talk a little louder, Mr. Ward?

A. And by five or six men, depending on whether he was unloading on the vegetable platform, it would be five employees, or whether on the fruit platform adjacent, where the auction commodities are received, it would be six men. The gang would be broken down as to two loaders and three truckers. The commodities on the vegetable platform would be trucked from the car to the location on the dock

where the merchandise was to be stacked, displayed and sold.

At this point of location the consignee would meet the truckers with a group of their own employees known as pilers or sorters and would remove the packages from hand trucks at their expense, at the consignee's expense, and line them up according to brand, size, grade, quality or other factors.

Exam. Brown: Now, this unloading situation in Philadelphia, so far as unloading gangs and that type of evidence is concerned, was covered at the prior hearing. To the extent that your evidence changes any of that evidence, if at all, please indicate as you go along.

Mr. Fitzgerald: I will bring that out by the questions, Mr. Brown.

Mr. Miller: Mr. Examiner, could I ask a question of counsel?

[fol. 1130] Exam. Brown: All right.

Mr. Miller: Mr. Fitzgerald, is there any point in going through this testimony again since it has already been fully described in the record? Couldn't we shorten this by simply stating what differences there are now, if any, from that described by Mr. Hampton at the prior hearing?

Mr. Fitzgerald: One of the things which I believe caused difficulty in the prior proceeding was that there was not an adequate description, explanation or understanding of the operations at Philadelphia.

Mr. Miller: Very well.

Mr. Fitzgerald: And I believe that by only bringing it out in this way can the record show sufficiently clearly the operations as they existed at Philadelphia.

A. (Continuing) In addition to the custom that I have just described, there was one other feature and that was that should the railroad place a car late for unloading or should it be ordered held and not unloaded by the consignee, he in turn could unload that car by himself with his own labor after the market opened.

By Mr. Fitzgerald:

Q. You say he could. Does he do it?

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A. He is not permitted to do so at the present time, but he did do it about—we estimate that approximately 20 percent of the commodities unloaded prior to November 1, 1949, were unloaded by the consignees on labor on the depot.
[fol. 1131] Q. Is there a tariff provision now which prohibits you from unloading?
A. The railroads have interpreted their tariff to that effect. We challenge that.

Mr. Fitzgerald: And we will bring that out.
Exam. Brown: Well, as a matter of fact, you have not unloaded since November 1, 1948.
The Witness: Simply because we have been denied the right.
Exam. Brown: And I am referring to unloading in situations where the carriers would unload and make a charge against shipment.
The Witness: Yes. We have not unloaded since——
Exam. Brown: I am not talking about team tracks.
The Witness: No. This is platform only.

By Mr. Fitzgerald:

Q. Now, Mr. Ward, the employees of the railroad did not, according to your testimony, as I understand it, handle those packages at any time after they placed them on the hand truck and moved the hand truck to the platform location?
A. That is right.
Q. They were removed from the hand truck by employees of the consignee?
A. That is correct.
Q. Did railroad employees perform any sorting service?
A. No, sir.
[fol. 1132] Q. Who did?
A. Consignee sorters.
Q. Did the consignee pay for sorting service?
A. Yes, at a minimum of $7.50 per car.
Q. But to his own employees and not to the railroad?
A. That is right.
Q. Now, I direct you to Mr. Hampton's testimony in the prior proceeding in which he referred to the fact that at

the time of unloading these hand trucks there was, and I want to quote his words in this operation—he said, in answer to a question by his counsel: "The truckers are required to take more time while waiting on the platform for the consignees' men to take the produce off the truck and stack it on the floor since they usually take advantage of that opportunity to make a careful inspection of the produce.

Thus, for example, in the case of onions, potatoes and most of the commodities in bags, the consignee's men will first examine the bag, then turn it over to examine the other side, and only then stack it in its place on the floor."

Mr. Miller: Mr. Examiner, before that question is answered, I should like to have it clarified as to whether that refers to the situation where the railroad performed the unloading, and, further, I would like counsel to specify the transcript reference of the statement to which he refers.

Mr. Fitzgerald: Mr. Examiner, I am unable to cite the [fol. 1133] page in the official record at which this testimony appears. I have here an exhibit as was supplied at the previous hearing.

Exam. Brown: You will find that page number in a few moments. In respect to the other request of counsel, can you comply with that?

Mr. Fitzgerald: This was, as I understand, Mr. Miller's question, relating to the service as provided by the carrier in the unloading of vegetables at B platform, which at that time was a free unloading service and which extended only to the point of trucking the hand truck to the location at which the consignee's men would remove it.

Does that answer your question, Mr. Miller?

Mr. Miller: Yes.

Exam. Brown: This was prior to November 1, 1948?

Mr. Fitzgerald: Yes.

The Witness: Now, will you repeat the question, please, briefly?

Mr. Fitzgerald: I will ask the stenographer to read the question again. I do not think it will be necessary to read the quotation.

Exam. Brown: Restate the question.

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Mr. Fitzgerald: Let me put a question now, since Mr. Miller's objection has been satisfied.

By Mr. Fitzgerald:

Q. Now, directing your attention to the quotation of Mr. [fol. 1134] Hampton's testimony that I have just read, will you comment upon this with particular reference to the question of any delay occasioned by the unloading and sorting by employees of the consignee?

A. The shipper tenders packages to the carrier in good order and the carrier is obliged to deliver to the receiver in that condition. If damage is incurred during transportation, carrier's rules demand that a segregation of such packages be paid prior to claim, prior to determination of the claim.

Exam. Brown: I do not understand what you mean.

The Witness: We start out with good order packages, and if at destination a condition of damage has occurred in transportation, the bad order, the broken or damaged packages, must be segregated from the good order packages; otherwise, the receiver is not entitled to claim, by rules of the Association of American Railroads of principles and practices.

Therefore, we are speaking of the railroad performing an act not related to transportation, but of segregation of damage incurred by them in transit in order that they may even go to the point of minimizing such damage.

Exam. Brown: You stated that the packages must be segregated prior to claim. That is the reason I did not understand you. Do you mean they must be segregated prior to delivery?

The Witness: Prior to delivery.

Exam. Brown: That is what you meant?

[fol. 1135] The Witness: And handled as such in order to facilitate or to make claim possible, if liability exists.

Exam. Brown: And it is your contention that that is not part of transportation?

The Witness: That is right.

Exam. Brown: Assuming, of course, that the car has not yet been delivered to you.

The Witness: We assume—in fact, the packages are not, in a sense, delivered to us since the railroad reserves the right to recooper and return as many of those packages to good order as they can prior to delivery.

Exam. Brown: All right. Now, if the packages are recoopered and brought into a satisfactory condition and then delivered to you, isn't that recoopering part of the transportation?

The Witness: That is correct. It is part of the transportation, not part of the unloading. I think I used the wrong statement. I said it is not part of the unloading of the segregation.

Exam. Brown: Now, if the packages are recoopered after the rest of the car is delivered to you, and it develops that some of those packages are beyond repair and the carriers themselves dispose of them, then that is not part of the transportation, is that right?

The Witness: That is not part of the transportation. [fol. 1136] That is an act of rejection after the packages have been delivered.

Exam. Brown: In other words, anything that occurs after the actual delivery is not transportation?

The Witness: That is right.

Exam. Brown: And anything that occurs prior to that time you consider transportation?

The Witness: I do.

Exam. Brown: Now, that is your personal view?

The Witness: Yes, sir.

Exam. Brown: And these are questions on my part and not statements.

The Witness: Yes, sir.

By Mr. Fitzgerald:

Q. Now, Mr. Ward, as respects Mr. Hampton's statement to the effect that there was delay because of the inspection of these packages by the consignee, what do you have to say with regard to that?

A. Well, again, may I express my personal opinion from observations? The inspection is a brief period. It is done before the packages are removed or at the time they are removed from the hand truck by consignee's help, and in a

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sense, to me, it means a saving rather than a delay because, due to our doing our own sorting, the consignee is not obliged to add additional men to his unloading gang for the purpose of unloading the trucks.

Q. What is the operation of the consignee in removing [fol. 1137] these packages from the truck and in this sorting, as Mr. Hampton calls it?

A. Well, the railroad truckers run their two-wheel truck up to the location where the commodity is to be stacked and the bags are lifted from the truck by consignee's sorters and are placed either in the main line or left on the truck and run back about 15 or 20 feet, at which point the consignee's sorters remove them from the truck and make another pile.

Q. Then the bag or package is picked up by the consignee's employees and put in a stack?

A. Either in the main line or put in a separate pile.

Q. Is there, in fact, any delay occasioned by the necessity of inspecting that package?

A. Very small amount. It is just a matter of looking at one side of the bag or the package—maybe you do not have to turn it. In fact, when a car is running sound, as most of them are, there is no delay at all.

Q. Now, since November 1, 1948, in what respects has the unloading operation changed on B platform?

A. The unloading operation has not changed in any respect except that the consignee now charges for the unloading and he also refuses the consignee the privilege of coming on the platform and unloading their own cars, if they elect to do so.

Mr. Fitzgerald: Mr. Stenographer, read that answer. [fol. 1138] Mr. Montgomery: I think that is a little confusing there. He said the consignee does the unloading.

The Witness: The railroad.

Mr. Fitzgerald: Will the stenographer read the witness's last answer? I did not catch it.

(The reporter read the witness's last answer.)

By Mr. Fitzgerald:

Q. The word "consignee" should read "railroad"?

A. That is correct.

Exam. Brown: In other words, the record will stand like it is. In other words, when you made the statement that the consignee makes a charge, you mean the railroad makes a charge.

The Witness: I do.

Exam. Brown: Off the record.

(Discussion off the record.)

By Mr. Fitzgerald:

Q. Now, Mr. Ward, you say that the consignee is not permitted to unload. Do I understand from that that the railroad will not deliver a car at platform unless the consignee orders the railroad to unload it?

A. That is right. Placement will not be made unless unloading is ordered by the consignee.

Exam. Brown: Now, let us get the facts straight in that connection. The carriers always wait until you order a car to be placed on the platform, or do they move it in on the platform and then ask you?

[fol. 1139] The Witness: They wait until it is ordered placed on the platform.

Exam. Brown: In other words, you are notified in advance of the arrival, of the pending arrival of that car, and then you notify the carriers that you wish either team track delivery or platform delivery?

The Witness: That is right.

Exam. Brown: And after you advise the carriers, then they spot the car?

The Witness: Correct.

Exam. Brown: All right.

By Mr. Fitzgerald:

Q. Now, if you advised them that you want platform delivery, will they make platform delivery?

A. I would say no. No, they do not make platform delivery.

Q. There is a proviso made by the railroad before they will deliver the car at the platform?

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A. The proviso is that they will not make platform delivery, will not place the car on the platform unless the consignee orders car unloaded. That is the difference between platform delivery in that it is not accessible to the consignee at the platform until the railroad has unloaded and assessed a charge.

Q. In other words, after having placed a car alongside the platform at the consignee's order, provided the consignee has ordered the railroad to unload that car with [fol. 1140] its own employees, the consignee is not permitted to enter that car himself or with his own employees or to remove the commodity from that car with his own employees, is that it?

A. Not permitted to enter the car for the purpose of unloading with his own employees.

Exam. Brown: Is he permitted to enter the car for the purpose of inspection?

The Witness: Yes, sir.

Exam. Brown: He may do that?

The Witness: Yes, sir.

Exam. Brown: Who breaks the seal?

The Witness: It is usually the inspector or the consignee-owner of the car, the inspector employed by him, or the owner of the car.

Exam. Brown: In that respect, your practice is no different than it is on the docks of New York?

The Witness: I think not.

Mr. LaRoe: May I ask there what would happen if you should tell the railroads to please place that car and we will unload it ourselves, the shippers, the consignees will unload it? What would the situation be then?

The Witness: The car would be left in the yard. It would not be placed.

Mr. Goldsmith: Mr. LaRoe, you were talking about platform delivery, were you not?

[fol. 1141] Mr. LaRoe: Platform delivery.

By Mr. Fitzgerald:

Q. Is it correct, then, Mr. Ward, that as regards the physical work done by the railroads' employees in the un-

loading of the car which has been placed at the platform, and as to which they have been ordered to do the unloading, no additional services of any kind are performed by the railroads that were not performed prior to November 1, 1948?

A. That is correct.

Q. Now, Mr. Ward, what are the present unloading costs for the unloading by the railroad of the cars of commodities at platform at Philadelphia?

Exam. Brown: Now restrict that to the commodities he is testifying about.

By Mr. Fitzgerald:

Q. (Continuing) As to the commodities to which your testimony has been limited.

A. $1.95 a ton. 650 bags of 50-lb. onions would run about $29.

Exam. Brown: Is that the usual loading of onions?

The Witness: That is the minimum.

Exam. Brown: That is the minimum, but let us be practical; what do you actually pay?

The Witness: The cost runs from that point up to around $35, on that one commodity.

Exam. Brown: Well, how many bags of onions do you normally get in?

[fol. 1142] The Witness: 300 bags. At the present time there is a trend back to the minimum loading since the decease of the ODT heavy loading orders.

By Mr. Fitzgerald:

Q. Now, is it true, Mr. Ward, that the schedule published by the railroad and the tariff printed after the order of the Commission effective November 1, 1948, stated an unloading charge of $1.50 for onions instead of the $1.95 that you have mentioned?

A. That is true. The first tariff which came out stated for that particular commodity $1.50—isn't it? However, that was never charged. The railroads interpreted other increases as applying to this tariff and thereby increased

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the first published unloading allowance, increased it by 30 percent.

Q. And have exacted that increased tariff from Philadelphia receivers ever since?

A. That is correct.

Q. Now, Mr. Ward, since November 1, 1948, as a result of the imposition of this unloading charge, what changes, if any, have been forced upon the receivers of vegetables in Philadelphia in the conduct of their business?

A. Well, in respect to the commodities which we have been discussing as having been unloaded on the platform, the unloading of that commodity has been dislocated to the extent of—our most recent figure—63 percent now being handled in the yard, which formerly was unloaded and distributed, [fol. 1143] sold and delivered from the platforms. The effect has been quite detrimental in a sense to the receivers in that the trade was always accustomed to buying these commodities from inspection of the carlot, and at time of unloading on the platform any bags which had been damaged, rubbed, or spotted, either due to bruising or decay, were segregated into a separate block.

The buyer, therefore, would buy main line merchandise in dry and sound, good condition. He now buys from samples, and when he goes to the car, he encounters all of these conditions, casts them aside and sorts through the car, the result in many instances is—in the majority of instances—a state of confusion exists in the car. The buyer going into the car for his load, the first view he gets is the accumulation of damaged or spotted or decayed or otherwise disfigured packages cast aside in the doorway area of the car.

We are suffering a lot of losses of sales, necessitating reselling or necessitating eventual trucking the car or ordering it unloaded in order to segregate these damaged conditions from the good load.

Q. What happens to the price agreed upon at the time of the purchase by sample in those cases?

A. It is difficult to resell on the following market at the same price you can realize on the first arrival, and in addition to that, adjustments—receivers are obliged to

[fol. 1144] make numerous adjustments because of the delivery from the car and the buyers have accidentally or unintentionally taken packages which do not qualify as sound and main line bags. It is a state of confusion as far as the distribution of that commodity is concerned.

Q. Does it have any effect on the promptness or rate of return to the grower?

A. Not only on the promptness, but on both the promptness and the rate of return.

Q. Will you explain?

A. Well, cars which normally would be sold and delivered in one day are carried over and resold in parts, and as I previously stated, to sell them you cannot realize the same returns on a commodity the second day that you realized when the car was fresh and a new arrival, unless there had been a change in the market value.

Q. Have the receivers encountered to any considerable extent the necessity of adjusting downward the price at which goods had been sold by sample based upon the observation of the car?

A. Well, that I mentioned, that when a buyer does leave the car with some damaged packages, he, as a rule, seeks an adjustment in his selling price before he pays the bill.

Q. Then that would have an effect also upon the delay of the return to the grower, would it not?

[fol. 1145] A. That is right.

Q. Now Mr. Ward, I direct your attention to the photographs that have been introduced in evidence. You said those were made on the morning of September 19, is that correct?

A. That is right.

Q. What is the volume of business being done at the Pennsylvania Produce Terminal as of September 19 compared to normal conditions?

Exam. Brown: What are normal conditions?

Mr. Fitzgerald: Well, I will ask the witness that.

Exam. Brown: No, I am asking you.

Mr. Fitzgerald: It is my understanding, sir, that the market is down to about one-third of its customary, that is, normal volume in peak seasons.

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Exam. Brown: Let us get this straight. Yesterday the term "normal conditions" was used and one witness answered it went back as far as 20 years. Now, are you talking about normal conditions prior to the war or are you talking about normal conditions prior to the effective date of these unloading charges?

Mr. Fitzgerald: No, sir. My question was directed to normal conditions in the course of the produce season. I will try to clarify that through the witness.

Exam. Brown: Well, will you make your question clear so that anybody can know what you mean by your question? [fol. 1146] Go ahead.

By Mr. Fitzgerald:

Q. What is the condition of the produce market in Philadelphia as of September 19 with respect to the volume?

A. We are off about 40 percent of what our volume would be during the winter and spring months. This is the home grown season, which furnishes a great quantity of produce in the Philadelphia area, and the yard and the business is approximately 30 to 40 per cent what it will be after we receive our first killing frosts in the East.

Q. Well, now, Mr. Ward, you say 30 to 40 per cent of what it will be. Do you mean that it is reduced by 30 percent or that it is reduced by 70 percent? I want to make that clear.

A. It is about 30 percent—40 percent of what it would be. It is reduced by 60 percent.

Q. And the reason for that, as you explain it, is that the market is now using vegetables of local origin which do not come in by rail either from the South or the West?

A. That is right.

Exam. Brown: Now, the situation is not any different this year than it was last year or the year before then or five years ago?

The Witness: No. We are speaking now of the seasonal conditional volume received.

Exam. Brown: It is just a question now of local competi- [fol. 1147] tion?

The Witness: That is right, and I bring it out because

the yard looks rather empty. The photographs which do show blocks are not near as plentiful or as many as they would be when the yard is full and our volume is rolling normally.

By Mr. Fitzgerald:

Q. In other words, then, if that picture were taken during the winter, in the height of your winter season, the tracks would be loaded to an extent of perhaps 70 percent more than that picture now shows?

A. That is right.

Q. Now——

A. Maybe—I think we had better state 60 percent. I do not think it goes up to that other figure.

Q. Now, in regard to Exhibit 107, I direct your attention to the fact that there are three, at least three points, in the yard at which there is a very noticeable congestion. Will you explain those?

A. This is track 14, 16, 18 (indicating). On the driveway of tracks 18 and 19, we have a congestion caused by unloading from a car, at which seven trucks are gathered, and at the south, extreme south end of the same driveway we have another like congestion, which shows that the cars intervening—a total of 16 cars—are inaccessible to any truck which would desire to take delivery from those cars at this particular time.

[fol. 1148] Q. In other words, the attempt by trucks to effect delivery from both sides of the driveway at one end of the team tracks will effectively block the entire two sidings or their lengths from anyone else taking delivery at that time?

Mr. Miller: Objection, Mr. Examiner. The witness did not state the facts contained in counsel's question and the exhibit does not so indicate.

Mr. Fitzgerald: Well, I think he can answer my question.

Mr. Miller: It is contrary to fact.

Exam. Brown: Restate your question and make it conform to fact, if it does not.

Mr. Fitzgerald: May I ask that you read the witness's answer, Mr. Knuppel?

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Exam. Brown: Which answer?

Mr. Fitzgerald: The answer to the last question before.

Exam. Brown: The answer to the last question has not been answered. We do not have an answer to the question, do we? There was an objection made and I did not hear any answer.

Mr. Fitzgerald: The witness's last answer to the next preceding question is one that I would like to have.

Exam. Brown: Read it.

(The reporter read the witness's answer above referred to.)

Mr. Fitzgerald: I will withdraw my subsequent question. The one to which objection was made. I think that is a satisfactory answer.

[fol. 1149] By Mr. Fitzgerald:

Q. In your opinion, Mr. Ward, will that condition be increased to the disadvantage of the consignees at the height of the winter season, that is, as the season progresses?

A. Yes, the congestion increases; that is, there are more instances, like instances.

Q. A substantial portion of the cars received in Philadelphia, for the Pennsylvania Produce Terminal, go to auction and are never placed on team track at the present time, is that correct?

A. That is correct.

Q. If the cars now going to auction—and that involves citrus—were to be delivered to team track for unloading by the consignee, what in your opinion would the conditions be at team track with respect to the opportunity to take delivery of the merchandise in the cars?

Mr. Miller: Objection, Mr. Examiner. The question is wholly irrelevant. It presupposes a state of facts which never has existed and which has no prospect that it will ever exist.

Mr. Fitzgerald: I should like to be heard on that, Mr. Examiner. The question is a very pertinent one, as will be shown by subsequent witnesses. I feel confident the auction is in exactly the same position as we are. They are not permitted to unload their cars. They are required to have

[fol. 1150] the railroad unload them. They have no opportunity of taking delivery in any other manner. They do have the opportunity of having their cars delivered at team track and unloading them themselves. There is no reason why the auction receivers should not, if they wish, deliver their cars to team track and take delivery in the same way that has been testified here. It is not a question that has no relevance. It is an extremely relevant question.

Exam. Brown: Is your question limited to citrus intended solely for auction?

Mr. Fitzgerald: For fruits, primarily citrus, intended for auction at the Pennsylvania Produce Terminal.

Exam. Brown: Does your question include any shipments which the consignee might decide not to send too often?

Mr. Fitzgerald: No, sir. It includes only those which are now going to auction for unloading at the platform, and asks what, in his opinion, would be the condition if they were, instead, delivered to this team track.

Exam. Brown: Now, is it true that the present practice—and I will ask that of the witness—is to display all citrus intended for auction?

The Witness: Unload. All citrus intended for auction is unloaded and displayed in full.

Exam. Brown: There is no exception to that, is there?

The Witness: No, sir.

[fol. 1151] Mr. Loos: Mr. Examiner, may I be heard on this? I want to challenge the statement made by Mr. Miller that there is no prospect of this occurring, namely, that fruits now unloaded at auction will be placed on team track. I want to say that there is no basis for any such statement. If this unloading charge continues in Philadelphia, the shippers who now sell at auction will be obliged to find some other way to sell their fruit, and that may well require unloading on team track.

Exam. Brown: Well, I will say this, that the record up to date does not warrant an inference that there is no possibility of the shippers unloading shipments themselves. The record does show that there is a present practice for the carriers to unload citrus when auction is had.

Mr. Miller: I may be mistaken, but I heard no testimony to the effect that any receiver of auction fruits and vege-

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tables at Philadelphia had any present firm intention of discontinuing his present practice in regard to auction.

Mr. Fitzgerald: I say, Mr. Examiner, that no witness has been heard for the Philadelphia auction.

Exam. Brown: Mr. Wells?

Mr. Wells: Mr. Examiner, I would like to call attention to the fact that one of Mr. Stedman's exhibits filed yesterday definitely shows a very substantial percentage of Florida citrus that is delivered at Philadelphia and is not sold on [fol. 1152] auction.

Exam. Brown: Well, so far as Mr. Miller's statement there is no possibility of this occurring, I do not believe that is supported by the record. All we know is what the present practice is. I will permit the witness to answer. Objection is overruled.

Mr. Fitzgerald: Will you answer the question, Mr. Ward? Do you wish it read?

The Witness: I think I can make an answer. If the cars now normally unloaded on auction—citrus and other fruits —were to be placed in the yard along with the vegetables that normally are handled at that point, it would tax the facility of the yard. There would be some days when the yard would not hold all of the cars handled at both the yard and the platforms, and it would create—it would throw probably twice as much trucking, trucking from two cars, into the yard. The facilities would definitely not accommodate such a method of delivery without great delay and handicap to the receivers and buyers.

Q. Now, Mr. Ward, what is the present attitude with respect to the receivers in Philadelphia who formerly, as you testified, in many cases unloaded their own cars at B platform? Are they satisfied with the present arrangement by which they must either unload at team track or have the railroad unload?

A. No, they are not satisfied. They object to the charge [fol. 1153] and likewise request the privilege of performing their own unloading if they desire to do so.

Exam. Brown: Now, don't you have the privilege of unloading now on team tracks?

The Witness: We do, Mr. Examiner.

Exam. Brown: What would be your purpose of unloading on platform when you can unload on team track?

The Witness: Certain commodities are best merchandised —by nature of the commodity and custom in our market, are best merchandized from unloads on the platform.

Exam. Brown: And you are referring to those types of vegetables?

The Witness: Yes, sir.

Exam. Brown: You would not mean potatoes, for example?

The Witness: Potatoes are one of them and one of the greatest—potatoes and onions, and other commodities, such as tomatoes and crated melons in season, turnips and cabbage, not top-iced, celery which comes from the South without top ice are other examples.

Exam. Brown: Is what?

The Witness: Is an example.

Exam. Brown: Do you get much celery from the South which is not top-iced?

The Witness: Yes, quite a bit in the southern season.

Exam. Brown: Florida?

[fol. 1154] The Witness: Yes, sir. Incidentally, we do not get as much now as we used to.

By Mr. Fitzgerald:

Q. Have receivers, to your knowledge, requested that the railroad permit them to unload their own cars at platforms since November 1, 1948?

A. The receivers represented by the Association have made such a request of the railroads right after the unloading charge was put into effect and we were denied the privilege of doing so.

Q. Was that request oral or in writing?

A. The request was made in two meetings which are known as contact committee meetings between the Association Board of Directors and officers of the Pennsylvania Railroad.

Q. And did the Pennsylvania Railroad deny that request?

A. They did, and at a later date I reintroduced the sub-

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ject by correspondence to see if they had not changed their mind on it and got a written answer to that effect.

Q. Did you then write a letter to Mr. I. T. Marine of the Pennsylvania Railroad?

A. I did.

Q. Do you have a copy of that letter?

A. Yes, sir.

Q. Will you read into the record the letter that you wrote to Mr. Marine?

Exam. Brown: Ordinarily, the best way of introducing [fol. 1155] this type of material is to introduce it by exhibits, but I understand, or assume, that you do not have them prepared?

Mr. Fitzgerald: That is correct.

Exam. Brown: You had better display those letters to counsel. We will have a short recess.

(A short recess was taken.)

Mr. Fitzgerald: Mr. Examiner, may I proceed?

Exam. Brown: Proceed.

Mr. Fitzgerald: I understand that counsel for the Pennsylvania Railroad offers no objection to the reading into the record of the letter testified to by the witness.

By Mr. Fitzgerald:

Q. Will you read the letter that was written by you to Mr. I. T. Marine on March 16, 1949?

A. (Reading) "Dear Mr. Marine: It has been some time since our contact committee meeting of November 17th at 30th Street Station, and your visit of November 23, 1948, to the office of Mr. P. J. Cancelmo in the interest of discussing possible means of relief to the Philadelphia carlot fruit and vegetable receivers from the exhorbitant unloading charges imposed on November 1, 1948, through Tariff 1233E, Supplement 107. As you know, various interests of the industry have since petitioned the Interstate Commerce Commission for reopening and reconsideration of the unloading charge and your railroad, as well as others involved, have filed a brief with the Commission against such reopening and reconsideration.

[fol. 1156] "At time of the above-mentioned meetings, we of the trade were of the opinion that the Pennsylvania Railroad recognized this unloading charge as a detriment to merchandising receipts at the terminal platforms and was sympathetic of our problem to the extent of making further study towards the possibility of adjusting said charge to a more reasonable figure. Most recent events seem to indicate that such was not the case or that you have since decided to rest until such a time as the Commission takes action.

"You will recall that at the time this unloading charge was effected, the Pennsylvania ruled that consignees could not perform their own unloading. This decision ignored the fact that certain receivers of potatoes and onions were and had for some time past either delivered direct from cars placed adjacent to "B" depot or unloaded such contents on the floor with their own employees. Such a ruling forced the receivers to pay the $1.95 per ton unloading charge or change their established custom of doing business by making deliveries direct from cars located on team tracks.

"These receivers feel that the present-day margin of profit does not justify the unloading charge, and at the same time find that it is detrimental to their business to be forced to team-track delivery.

"I find it difficult to understand the seemingly arbitrary position taken by the carrier in refusing these consignees [fol. 1157] the right to continue operating in the customary and established manner since such unloading incurs no expense to the carrier. These receivers have found both the unloading charge and team-track deliveries detrimental to their own interests as well as to the welfare of the industry. This is to appeal for further consideration on your ruling that such receivers cannot perform their own unloading as they did before the effective date of this unloading charge.

"We trust that you can now find causes to justify a reversal of your previous ruling or give adequate and just reasons why you must continue with your present policy."

Signed by D. W. Ward, General Manager.

Exam. Brown: I might state at this time if in the future

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any counsel has material of this kind, it is much better to put it in the record as an exhibit rather than reading it in. I am permitting an exception of our usual practice in this case. Go ahead.

By Mr. Fitzgerald:

Q. Now, did you receive a reply to that letter, Mr. Ward?
A. I did, on March 30th, from Mr. Marine.
Q. Will you read that letter?
A. (Reading) "I have noted with a great deal of interest your letter of March 16th regarding unloading charges on fruits and vegetables published late last year.

"There has been no change in our position, this matter [fol. 1158] being now before the Interstate Commerce Commission. I believe you will agree that our position was made entirely clear when this matter was discussed at the contact meeting, also in the office of Mr. Cancelmo."

Q. After this exchange of letters, has any Philadelphia receiver been permitted to unload his own cars at B platform?
A. No, sir.
Q. Now, Mr. Ward, as general manager of the Philadelphia Terminals Marketing Association, what effect, if any, has the unloading charge had upon the business of the carlot receivers?
A. The 10-month period following the imposition of the unloading charge, the carlot receivers have suffered a 7 percent decrease in rail receipts.

Exam. Brown: Now, that 7 percent is as compared with this same period?

The Witness: As compared with the period of November 1, 1947, to August 31, 1948, or corresponding period. In that same period, in carlot equivalents, truck receipts in the Philadelphia market have increased 11 percent.

Exam. Brown: Are you referring only to the commodities you are testifying about or does that include citrus fruits?

The Witness: I am referring to all fruits and vegetables —figures from the authority of the Federal State Market News Report.

[fol. 1159] Exam. Brown: Be careful when you testify. Tell us exactly what you are talking about.

The Witness: Yes, sir.

Mr. Wells: May I ask, Mr. Ward, the 7 percent decline was in rail receipts?

The Witness: Yes, sir.

By Mr. Fitzgerald:

Q. Now, you have testified, have you not, that the members of your Association deal only in receipts by rail?

A. That is right.

Q. So that a reduction in rail receipts is a reduction in business to the members of your Association?

A. That is correct.

Q. Now, has there been any other diversion of business from the receivers due to this unloading charge, in your knowledge?

A. In my work for the Association, I spend a great deal of time contacting wholesalers outside of our terminal market, within a radius of 150 miles. My interest is to become acquainted with these people, find out their reaction to our terminal, and to stimulate business in our particular area, and if they are not dealing with us, why. If they once did, why they left. I have ran across a great number of such wholesalers who state that one of the reasons, or the reason as having left the Philadelphia market is that they now purchase certain commodities direct by trucks [fol. 1160] because of the imposition of the unloading charge.

Q. Can you name some of the wholesalers to whom you have talked and from whom you have received that answer?

A. Well, there is R. W. Strickler and Yorktown Wholesale, in York, Pennsylvania; I. Silverman in Wilmington, Delaware; Harrisburg Banana and J. W. Feeser in Harrisburg; A. Greco in Williamsport; Aggressive Merchants Association, Lehighton; and there are others that do not come to my attention at this time.

Q. Now, Mr. Ward, in the case of Idaho potatoes, for example, the Philadelphia receiver now pays what freight charge to have a bag of Idaho potatoes delivered in Philadelphia, that is, transported to Philadelphia?

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A. I once knew that figure, but it has slipped my mind.

Q. Well, to refresh your memory, is it approximately $1.50 per bag?

A. That, I think, is the figure I developed.

Q. Now, what charges, in addition to that transportation charge, must the receiver pay for that bag of Idaho potatoes before he can sell it?

A. The first charge is the unloading charge, which on a 100-pound bag amounts to, within a mile, 10 cents per bag. The second charge is a sorting charge which the receiver pays to his employees at a minimum rate of $7.50 per car or 2½ cents per bag. The third charge is a de-
[fol. 1161] livery charge which the receiver pays to his employees, known as delivery clerks, which is at a minimum of $7.50 per car or two and a half per bag, and a third charge, which is paid by the buyer, is a trucking charge from the terminal to his place of business, which in the case of Idaho potatoes at the nearest point of distribution in Philadelphia would be 15 cents a bag.

Q. To Dock Street?

A. To Dock Street area, and at greater amounts as you bypass and reach into farther areas.

Exam. Brown: When you said two and a half per bag, you meant 2½ cents per bag?

The Witness: Yes, sir.

By Mr. Fitzgerald:

Q. Now, this total additional cost of 30 cents, as I add it up, is in competition with receivers of merchandise by truck who have no such charge, is that correct?

A. That is correct, and it is also in competition with receivers in the Philadelphia district who have private sidings or are permitted to perform their own unloadings.

Q. And who are those people to whom you refer?

A. That includes mostly the chain store organizations.

Q. Now, it is true, is it not, that this additional charge is constant regardless of whether the commodity is selling at a profit or loss?

A. That is a fixed charge which must be added on to the
[fol. 1162] purchase price and the freight rate.

Q. Now, Mr. Ward, will you explain to the Examiner the competitive relationship as respects your Association and its commodities between Philadelphia, Baltimore and Pittsburgh?

A. An area of competition exists between Philadelphia and all of its surrounding major terminals, that is, that group of receivers who are midway between. Those dealing on the Pittsburgh market, which comes from the Williamsport, Altoona, Lockhaven, Harrisburg area, can obtain delivery of their commodities by railroad unloading on the platform at a charge of $1.25 per ton.

The same competition exists in the area to the south, in the Baltimore market, whereby the railroads have arranged to lease their terminal to the consignees of fruits and vegetables who perform their own unloading, at a charge which they tell me in contacting them runs about 2 cents a package.

As far as the auction in Baltimore is concerned, there is only one charge for the unloading and delivery of the commodity to the buyer's truck tail gate of 5 cents as against our charge of at least 15 cents.

Exam. Brown: Five cents per what unit?

The Witness: Per package.

By Mr. Fitzgerald:

Q. Now, in your opinion, do these discrepancies between unloading charges that you have testified exist between Philadelphia and the two markets of Baltimore and Pitts- [fol. 1163] burgh adversely affect our competitive advantage with receivers of those Cities?

A. I am told that it does by direct contact with those wholesalers in the competitive areas, who deal at both places or prefer Pittsburgh or Baltimore to our market.

Exam. Brown: What do you mean by competitive area? Be specific, please.

The Witness: Wholesale markets between Philadelphia and Pittsburgh, such as Altoona, Williamsport, Harrisburg, Lockhaven and Sunbury; wholesale dealers between Philadelphia and Baltimore, such as Harrisburg, Wilmington, Delaware, York, and some other smaller points.

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Exam. Brown: How do these points get their produce from Philadelphia?

The Witness: By trucking, coming to the market and trucking back to their place of business.

Exam. Brown: You mean they personally come to Philadelphia and take their own truckload back?

The Witness: Yes, sir. They send their own trucks in and either come in person or are represented on the market by big brokers.

Exam. Brown: It is not any question, then, of members of your Association shipping outbound by truck to these competitive points?

The Witness: No. We do not do that type of business. [fol. 1164] Exam. Brown: Does Baltimore do that type of business, do you know?

The Witness: No, sir. I do not think that that type of business is conducted by either Baltimore or Pittsburgh.

Mr. Miller: Mr. Examiner, I move to strike the witness's answer to counsel's last question and his answer to your first question on the ground that the testimony is entirely hearsay.

Exam. Brown: That information was gathered in the course of this witness's line of business, was it not?

The Witness: It was by visits to the market and to the receivers on those markets.

Exam. Brown: Hearsay rule does not cover a situation like that. Objection overruled. Proceed.

By Mr. Fitzgerald:

Q. Mr. Ward, you have testified as to the letters exchanged between you and Mr. Marine. Was this the opinion of the members of your Association, after the unloading charge had been put into effect, that the opportunity for them to unload the cars at platform, at their own expense, would be of advantage to them?

A. It was, if we had either to unload our own cars or pay the exhorbitant rate that was charged by the railroad.

Q. On what did your Association members base that conclusion?

A. Among our Association members are members who had done their own unloading prior to the denial of the

right to unload, and they knew exactly what it cost them [fol. 1165] to do such work.

Q. And they felt that if the unloading charge were imposed they could do it much cheaper with their own employees?

A. They knew they could.

Q. Now, Mr. Ward, have you in the recent past had occasion to make observation of the unloading operation at B platform of the Pennsylvania Produce Terminal?

A. I have.

Q. Will you state at this time what you observed, fixing the dates, hours, and so forth?

A. Well, on September 18, 1949, I witnessed the unloading of a car containing 565 crates of Persian melons from car ART22681. The railroad approached this car at 8 p.m. with five men, two loaders and three truckers. They completed unloading of the car at exactly 9 p.m., or in a period of one hour or at a total consumed time of five man hours.

Q. Do you have the bill that was rendered by the railroad for the unloading of that car?

A. I do.

Q. What was the charge for unloading as rendered by the railroad?

A. $27.95, 94 cents tax, total $28.79.

Q. For five man hours?

A. That is right.

Q. That, I take it, is at a rate of approximately $6 per hour?

[fol. 1166] A. Close to $6.

Q. Based on man hours, what other observations have you made, Mr. Ward?

A. At 9 p.m., September 18, 1949, I observed the unloading of a car containing 600 bags of onions in car PFE-76142. Here again, the railroad employed five men, two unloaders and three truckers. Unloading was completed at 10:05 p.m.; total time consumed, 1 hour and 5 minutes, or a total of 5 hours and 25 minutes man hours. There also I observed the unloading. There was a certain amount of sorting of spotted bags from this car, yet there was no delay incurred to the truck.

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Q. You have the bill for the unloading of that car as rendered by the railroad?

A. I do.

Q. What is the unloading charge?

A. $29.25 plus 88- tax, total $30.13.

Q. I understand, then, that the unloading charge was $30.13 for 5 hours and 25 minutes of actual man hours?

A. That is right.

Q. Did you make any other observation, Mr. Ward?

A. I have other observations. I have one here on December 21, for example. Here are two cars of onions, PFE-66171, and PFE-62251. They both contained 600 50-pound bags of onions, both cars' unloading started at 5:40, [fol. 1167] and here they use less than two gangs. They were short one trucker and the foreman stepped in. Unloading was completed at 7 a.m. Time consumed, an hour and 20 minutes per car, total man hours six.

Q. And what was the unloading charge assessed in that case, if you have the bill?

A. In both instances the unloading charge was $29.25, plus 88 cents tax, total $30.13.

Exam. Brown: What was the unloading charge per ton, $1.95?

The Witness: $1.95 is the rate.

By Mr. Fitzgerald:

Q. Now, Mr. Ward, I direct your attention to the fact that in Mr. Hampton's testimony in the prior hearing previously referred to—and I am now able to give the page reference—at page 288, he stated: "This unloading operation in Philadelphia requires from a minimum of approximately 1¼ hours to a maximum of approximately 2½ hours per car," and I ask you, based upon your observation on the occasions you have mentioned, and other occasions, if there have been such, and on your knowledge of the operations at the Produce Terminal, what is your comment on that testimony?

A. I think that the maximum time stated in that testimony is much too great and that the minimum should be

considered more as the average, for all commodities.

Q. In other words, in your opinion the average time for unloading all commodities would be not in excess of 1¼ hours?

[fol. 1168] A. On dry vegetables, meaning potatoes.

Q. That is all we are speaking of.

A. Onions and melons and the like.

Exam. Brown: You are talking about actual unloading time now, are you not?

The Witness: Yes, sir, from the time the car was opened, light installed and plate laid down, to the time that the plate was removed and the lights removed after the bags were completely—or the packages completely removed from the car.

Exam. Brown: It has nothing to do with overtime, does it?

The Witness: No, sir.

Exam. Brown: In other words, the unloading is the actual consumer time that you are talking about?

The Witness: That is right, the time that it would take the consignee if he were performing the load himself on the basis of the railroad's performance.

Exam. Brown: It has nothing to do with employees who might be waiting to unload a car or being paid for waiting?

The Witness: No, sir.

Exam. Brown: All right.

Mr. Fitzgerald: Now, that concludes direct examination of Mr. Ward. I at this time would like to state for the record that the first reference to Mr. Hampton's testimony refers to pages 289 and 290 of the record.

Exam. Brown: What are the predominant vegetables you [fol. 1169] receive at Philadelphia from a tonnage standpoint?

The Witness: Potatoes, onions, tomatoes, crated melons, lettuce, carrots, or mixed vegetable shipments.

Exam. Brown: I am not talking about citrus fruit at all, now.

The Witness: Not from the Association viewpoint.

Exam. Brown: All right. Now, of those commodities, how do potatoes stand from a tonnage standpoint.

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The Witness: I can refer and give you more accurate statements if I look at the Government figures, if you would like me to.

Exam. Brown: Well, the Government figures cover all of Philadelphia.

The Witness: That is rail receipts. I can tell from them on rail receipts.

Exam. Brown: Well, you can refresh your memory or verify your ideas from it. It does not have to be exact. I just want the approximate situation.

The Witness: Well, potatoes are one of our heaviest commodities from a tonnage viewpoint.

Exam. Brown: 50 percent?

The Witness: No. I would say around 20 percent.

Exam. Brown: Onions?

The Witness: They will run around from 15 to 18 percent.

Exam. Brown: Almost as much as potatoes?

[fol. 1170] The Witness: Yes, sir.

Exam. Brown: Tomatoes?

The Witness: I certainly would like another book so I could be more accurate. It has to do with the 1948 summary as far as Philadelphia is concerned, and I have a good acquaintance with that book.

(The witness referred to a document.)

The Witness: Well, here, some are heavier. Potatoes, I was right, that is the heaviest, and my percentages are fairly accurate. Onions are, I would say, 10 percent. Peaches are in about the same category as onions. Crated melons account for about 15 percent. Lettuce, 9 percent. Carrots and mixed vegetables, speaking of beets and combination lots, around 8 or 9 percent. Cabbage, around 5 percent.

Mr. Fitzgerald: Does that answer the Examiner's question?

Exam. Brown: Of these commodities, do potatoes move under top-ice ventilation or refrigeration or a combination of all of them?

The Witness: Most of the potatoes move under ventilation. Those coming from the South may have some refrigeration at time of shipment. Those coming from Maine

during the winter may travel under another service known as heater service, shippers' protective service.

Exam. Brown: Any top ice in connection with potatoes?

The Witness: No top ice on that commodity.

[fol. 1171] Exam. Brown: When refrigeration is used, if at all, it would be in the bunkers of cars at origin?

The Witness: Yes, sir.

Exam. Brown: How about cabbage? Any top ice on cabbage?

The Witness: Cabbage from the West carries top ice, from west of Texas. Some cabbage from Florida also carries it. Others, at times, will come in dry, and cabbage coming out of New York State and northern points is without top ice.

Exam. Brown: How about tomatoes?

The Witness: Tomatoes, no top ice.

Exam. Brown: Melons?

The Witness: Honeydews, Persians, and mixed melons, no top ice. Cantaloupes, many times top-iced at point of origin, but the ice is usually melted at destination.

Exam. Brown: Lettuce?

The Witness: Top-iced.

Exam. Brown: Always?

The Witness: Yes, sir.

Exam. Brown: Peaches?

The Witness: No top ice.

Exam. Brown: Never?

The Witness: No, sir.

Exam. Brown: Now, what is the proportion of your shipments from various points of origin, including California, Florida, Texas and the remainder of the southeast and [fol. 1172] southwest? Just an approximation?

The Witness: Which are top-iced and which are not, do you mean?

Exam. Brown: No, the commodities themselves. Forget the top ice situation. Take potatoes, for example; where do you get most of those?

The Witness: I would say now that equal quantities come from Maine, from the southern tier States and from the western tier, cut in about three parts.

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Exam. Brown: The potatoes that you get at Philadelphia are pretty well divided as between origin?

The Witness: Yes, sir.

Exam. Brown: How about cabbage?

The Witness: That commodity probably 60 percent, from the West, and the balance from the South or Northern States. I am speaking of rail receipts now.

Exam. Brown: Onions?

The Witness: 75 percent from the Western States.

Exam. Brown: 25 percent from where?

The Witness: From nearby Western points such as Ohio and New York State.

Exam. Brown: You are referring to 25 percent now?

The Witness: Yes, that come from nearby points, but mostly from the West.

Exam. Brown: Your melons come from the West mostly? [fol. 1173] The Witness: Exclusively, you might say, as far as rail is concerned.

Exam. Brown: And lettuce from Florida and California?

The Witness: Most of the lettuce comes from the West.

Exam. Brown: You do not get any Florida lettuce?

The Witness: Very little comes by rail out of the Eastern States.

Exam. Brown: Could you give us an overall percentage and estimate as to shipments moving in ordinary box cars, in ventilator cars, and refrigerator cars, in heater service?

The Witness: We no longer receive shipments in box cars. The ventilated box car is only used in the case of watermelons. I am speaking now of Philadelphia arrivals. And there has been a trend to the use of refrigerator cars as far as watermelons are concerned. That resolves the use of the refrigerator car to practically all commodities, and I would say that as far as vegetables are concerned, 50 to 60 percent are top-iced; the balance either bunker-iced or under ventilation. Heater service probably would not involve more than 10 or 15 percent of the receipts.

Exam. Brown: Is there a separate charge made for top-icing and for ice in the bunkers of cars, that is, in addition to the charge for the refrigerator car, if there is such a charge.

The Witness: I understand there is a charge for the

[fol. 1174] refrigerator car and also a separate charge for the ice furnished, depending on the type of service that is ordered by the shipper.

Exam. Brown: And separate charge for top icing?

The Witness: Yes, sir.

Exam. Brown: I think that is about all along that line. Now, with respect to your distribution, your maximum, as I understand it, is about 150 miles from New York?

The Witness: That is right. From Philadelphia.

Exam. Brown: I mean from Philadelphia. Probably——

Mr. Fitzgerald: May I ask, Mr. Examiner, if——

Exam. Brown: If you will permit me to finish my question.

Mr. Fitzgerald: I am sorry, sir.

Exam. Brown: Probably the majority of that moves to points close to Philadelphia and as it spreads out, the percentage becomes less and less, is that right?

The Witness: That is right. I think that roughly 40 percent of our sales go outside the Metropolitan area and the further the distance the lesser the amount of volume to those points.

Exam. Brown: What percentage would you say is distributed in Philadelphia at points considered as a part of Philadelphia?

The Witness: 60 percent.

Exam. Brown: And how about the other 40 percent? Break that down.

[fol. 1175] The Witness: To outlying cities outside of Philadelphia that are not considered in the Metropolitan area.

Exam. Brown: Break that 40 percent down to points close to Philadelphia and points at some distance.

The Witness: Breaking the 40 percent down, 60 percent within a radius of 60 miles; the balance in the radius of 60 to 150 miles.

Exam. Brown: What percentage would you say went to points over 100 miles?

The Witness: Not over 10 percent.

Exam. Brown: Do you have any water transportation in connection with your shipments?

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The Witness: Not since the war. Prior thereto we were receiving waterborne citrus.

Exam. Brown: How about waterborne vegetables, potatoes, for example?

The Witness: We had waterborne Christmas trees in quite some quantity last year, coming out of the north Nova Scotia area.

Exam. Brown: I am talking about fresh vegetables.

The Witness: Potatoes—we are not receiving many imports of any nature there now.

Exam. Brown: When you speak of imports, you are speaking of imports coastwise, mostly coastwise?

The Witness: Coastwise.

[fol. 1176] Exam. Brown: But you get potatoes from Maine by water?

The Witness: Not to my knowledge.

Exam. Brown: Was it customary to get some shipments from Maine by water?

The Witness: I think that there have been shipments so received, but I am not well acquainted with that.

Exam. Brown: At the present time you are not receiving any commodities by water?

The Witness: That is right.

Exam. Brown: Now, sir, you may continue.

Mr. Fitzgerald: I did not intend to interrupt the Examiner, but I felt that a misunderstanding might be created by his answer to your question, the maximum distance of 150 miles. I believe that the witness has testified that perhaps the average distance would be 150 miles. It has been testified that the Williamsport-Altoona district is an area served by the Philadelphia market, and that is, I believe, as a matter of geographical fact, approximately 185 miles.

Exam. Brown: The exact words used by the witness were "distribution was up to 150 miles." He said nothing about average. Is that right, Mr. Ward?

The Witness: That is right. We have distributed to further points, but it is not general.

Exam. Brown: Any further questions on direct?

Mr. Wells: Mr. Examiner.

[fol. 1177] Exam. Brown: Mr. Wells.

By Mr. Wells:

Q. Mr. Ward, near the beginning your examination, you refer to the establishment, about 1947, of the B&O Produce Terminal and a little later the Pennsylvania Produce Terminal in Philadelphia. Prior to that time, was delivery of Florida fruits and vegetables primarily at the B&O float?

A. I think it was. I think that—I know that all of the fruit, all of the Florida fruit, was delivered at the rail heads or out on the piers along Delaware Avenue, opposite the Dock Street area.

Q. In other words, prior to the establishment of the particular produce terminals to which you have referred, there was a floating and an unloading by railroad on to the pier similar to the situation that now exists in New York?

A. That is right.

Q. Was there any change in the rail rate, either up or down, incident to the substituted service that was provided by the Produce Terminal?

A. No. The rate remained the same and the unloading service, as performed by the railroad at the piers, was also continued when the produce was transferred, and the fruits were transferred down to the terminals.

Q. In other words, while the delivery was made on the pier at Philadelphia, the delivery included the unloading by [fol. 1178] the railroad at the line-haul rate?

A. That is right.

Q. And after the change of the point of delivery to the Produce Terminals, the railroads continued until November 1, 1948, to unload that produce at the line-haul rate?

A. That is right.

Q. And the method of unloading was the same as it had been at the pier?

A. Right.

Mr. Wells: That is all.

Exam. Brown: Cross examine. Off the record.

(Discussion off the record.)

Cross examination.

By Mr. Miller:

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Q. Mr. Ward, as I understood your testimony, you disagree somewhat with the testimony of Mr. Hampton, first in his description of the delay incident to unloading on B platform, and, secondly, it was your testimony that now consignees are no longer unloading their own fresh vegetables on that platform. Is there any other circumstance in which the situation has changed or in which you disagree with Mr. Hampton's testimony?

Mr. Fitzgerald: I object to the question. It has not been pointed—Mr. Hampton's testimony has not been read to this witness.

Mr. Miller: Oh, he has not read it?

[fol. 1179] Mr. Fitzgerald: You haven't read it to him. I directed his attention to specific points.

By Mr. Miller:

Q. Have you read Mr. Hampton's testimony given at the previous hearing in this proceeding?

A. No, I have not.

Q. Now, you testified that the receivers of vegetables in Philadelphia had some difficulty in marketing their produce when it was unloaded at the team track. Can you tell me why it is they do not have it unloaded at the platform?

A. Yes. The unloading charge adds sufficiently more to the selling price that they are obliged to unload by team track to interest buyers.

Q. In other words, it is your contention that the railroad should perform its unloading service in order to permit these consignees to get the benefits which would accrue to them by reason of having the produce unloaded on the platform?

A. We have asked to be permitted to either——

Q. Will you answer the question, please?

A. No, not exactly the way you have worded it. We have indicated our willingness to perform our own unloading, but we have been denied that right and we have shown that.

Mr. Miller: I will withdraw the question.

By Mr. Miller:

Q. Well, you are here opposing the unloading charge?

A. That is right.

[fols. 1180-1207] Mr. Miller: That is all.
Mr. Smith: No questions, sir.
Exam. Brown: Redirect.

Redirect examination.

By Mr. Fitzgerald:

Q. Is it correct, from your testimony on direct, Mr. Ward, that an effect of the unloading charge has been not only dislocation of the business of the receivers, but a diversion of business from the railroads to trucks?

A. That is right. I have actually shown by our receipts that our business has decreased 7 percent, whereas in the same period, truck receipts have increased—of the same commodities—by 11 percent.

Q. Then, is it correct to say that your studies indicate that it is in the interest of the railroad, as well as the receivers, that the unloading charge be abolished?

A. Definitely.

Recross examination.

By Mr. Miller:

Q. Is your opinion, as to your statement as to diversion, based wholly upon those figures which you refer to?

A. No. My contact with a great many, practically all of our out-of-town buyers has convinced me of the facts that have been substantiated by the figures.

Mr. Miller: That is all.
Mr. Fitzgerald: That will be all.

[fol. 1208] Louis D. Goldstein was sworn and testified as follows:

Direct examination.

By Mr. Fitzgerald:

Q. Will you state your name, address and business?

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A. Louis D. Goldstein, fruit and produce, southwest corner of Second and Dock Streets.

Exam. Brown: Philadelphia?

[fol. 1209] The Witness: Philadelphia.

By Mr. Fitzgerald:

Q. How long have you been engaged in the fruit and produce business in Philadelphia, Mr. Goldstein?

A. My own business, 31 years, and I have been in the produce business for 39 years.

Q. And during that 39 years, what part of your life has been spent in the Philadelphia market?

A. The entire 39 years in the produce market in Philadelphia.

Q. You are at the present time, I believe, the president of the Philadelphia Terminals Marketing Association, is that correct?

A. I am, sir.

Q. And the Philadelphia Terminals Marketing Association, its constitution and its membership, I believe, has been testified to by Mr. Ward earlier today.

A. It has 54 members, receivers in the Philadelphia market.

Q. And it is your understanding, is it, that the members of your association handle the overwhelming proportion of the receipts of carlot vegetables in the Philadelphia market other than chain stores?

A. I think our membership handles 97 percent of the vegetables in Philadelphia, with the exception of the chain stores.

Q. Now, Mr. Goldstein, prior to November 1, 1948, you as an individual receiver handled some cabbage, I believe, did you not?

[fol. 1210] A. Yes, sir.

Q. And that cabbage was unloaded at B platform?

A. That is correct, sir.

Q. What effect, if any, has the unloading charge had on that portion of your business?

A. It has practically eliminated the handling of southern cabbage into the Philadelphia market at the terminal.

Q. What other parts of your business have been similarly affected?

A. Well, that is one of the chief commodities that we have handled from the south, and that has been practically eliminated, and of course, on tomatoes, there is another commodity that puts us in an unfair competitive basis due to the unloading charge.

Q. As a matter of fact, Mr. Goldstein, it is true, is it not, that your business, as an individual receiver, is not principally affected by this unloading charge, and you are here as a witness on behalf of your association?

A. That is correct.

Q. And in your official capacity?

A. That is correct. I am here to represent our association and not primarily as an individual.

Q. And in your official capacity, and based on your long experience, you are familiar with the effects of the unloading charge within the Philadelphia produce industry?

[fol. 1211] A. I am, sir.

Q. What is your opinion, Mr. Goldstein, of the effect of the unloading charge on the Philadelphia produce market?

A. Well, I think the Government records speak for themselves. I think that the receipts by rail have now decreased or did decrease approximately anywhere per month from 10 to 20 percent in the first six months after the first of November when this unloading charge went into effect, and I think after that, the decrease was considerably less due to a continuous growth, I believe, in the Eastern seaboard, that naturally kept the nearby receipts of produce lighter, and then I think our receipts have gone down anywhere from five to ten percent, or an average of seven percent.

Q. Then, I understand you to say that an effect of the unloading charge has been a diversion of receipts from the carlot receipts by the receivers and where, in your opinion, have those receipts gone?

A. Well, they went through a different form of distribution, naturally. Economic conditions would make it so, that if a man had to pay anywhere from 25 to 50 cents or a dollar per car more for the handling of his produce that in itself, on some commodities, is a great profit.

Q. What do you mean by that, Mr. Goldstein?

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A. Well, I just say, as an illustration, we represent—the Association does—members that handle chiefly potatoes, [fol. 1212] onions and cabbage. Well, there I am only speaking from what the average is. I used to handle them myself, and I figured the average would be 10 cents a package on 400 bags, or $40 per car. That in itself would be a good profit, but now with this unloading charge of approximately 10 cents a bag in itself, plus a condition that we have in Philadelphia that the railroad just really gives them to you at the door, they do not make delivery, they do not stack them, we have to pay a man to go ahead and stack these cars, which is another approximate 2 cents a bag.

Then we have a checking cost. That has always been in effect, though, and that is another 2 cents a bag—approximately 14 or 15 cents a bag for the handling of a product that the men would be glad to average 10 percent.

Or I might even say further, I came over with a potato man that said he would be glad to average 8 cents a bag over a period.

Q. Mr. Goldstein, when you said 10 percent——

A. I meant 10 cents a bag.

Q. Then the gross margin on that type of commodity, as I understand from your testimony, would be approximately $40 a car?

A. That is my testimony.

Q. What would be the total value of that car on which that margin is realized?

[fol. 1213] A. That would depend on market conditions. Naturally, sometimes potatoes are worth 2½ dollars a bag, sometimes less. Sometimes they go as high as $5 a bag.

Q. As of today, what would you say?

A. Well, as of today, I think potatoes are selling three to three and a quarter a bag.

Q. Then, it is your position that the imposition of this unloading charge in many cases will actually amount to an elimination of the entire margin that the dealer, the receiver of potatoes, would ordinarily realize in Philadelphia?

A. Absolutely. And I might answer that, that it will bring a condition that will cost the producer, I mean the farmers of this country, an untold amount of money. They will eliminate a lot of people that handle these potatoes

because of the competition that will not allow them to compete with people. That will enable them to have little sheds or anything where they can have a cart of potatoes backed against it, and sell it for even less than these people will actually cost them.

When you eliminate the customers from the farmers, the farmers will have less customers and they will naturally take less for their products.

Q. Now, Mr. Goldstein, in your opinion, has the unloading charge resulted in a substantial diversion of business from the normal channels of trade in the Philadelphia [fol. 1214] market to chain stores, for example?

A. Well, it eventually will. I cannot tell you exactly, but I have already testified here that the receipts by our receivers have been anywhere from 10 to 20 percent the first six months, and approximately 7 percent after that.

Exam. Brown: Less?

The Witness: Less, yes. There has been a decrease of receipts by the receivers. We are handling less and we will eventually, no doubt about it, handle still less.

By Mr. Fitzgerald:

Q. And is it your opinion that a substantial portion of those receipts not now received through us are going to chain stores? Am I to understand that from your testimony?

A. Well, it is going to other sources.

Exam. Brown: Let us have facts here. We do not want the witness's opinion in this respect. That is a factual question. The question was where are they going now. That is not an opinion answer. It does not call for an opinion answer. If you asked him, "In the future, what is your opinion," that is something else. Perhaps as an expert he can state that. Let us stick to facts here.

By Mr. Fitzgerald:

Q. Do you know of your own knowledge that some of this loss of business has been taken up and is now being taken up by increased receipts by chain stores?

A. I would say yes.

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[fol. 1215] Q. And is it your opinion that in the future it will continue as a result of this unloading charge?

A. Economics, itself, will tell you that the man who can sell the cheapest, even if he buys the products at the same price—if our potato men today would buy potatoes for $3 delivered to Philadelphia, and our chains would buy them for $3 at Philadelphia, eventually the cost to our people will be $3.15. Who would get the business?

Q. Now, Mr. Goldstein, I believe it has been testified here that there was a recent rate increase of 30 percent in addition to the imposition of this unloading charge.

In your opinion, does this 30 percent increase represent the true extent of the recent freight increase as its impact is felt upon your business?

A. As far as the rates are concerned, you mean?

Q. Yes.

A. Oh, no. There are additional charges besides this 30 percent that is to be allowed to them by the Commission at various times. For instance, in celery, which we handled in great volume, they have increased that to, I would say, over 50 percent.

Q. Now, explain what you mean by that.

A. Well, the same package that was billed by the carriers up until here recently of 50 pounds has now been increased to 60 pounds.

[fol. 1216] Exam. Brown: Didn't that occur two or three years ago?

The Witness: No, sir. That only occurred here in the last three or four months, Mr. Examiner.

Exam. Brown: I understood that at least two or three years ago there was some question about these estimated weights. Weren't those estimated weights changed at that time? Mr. Wells?

Mr. Wells: Some estimated weights on Florida celery were changed about the time of I&S 4577, which was back in 1940, but the reference which the witness is making here is on a package of celery from California.

Exam. Brown: You are not talking about Florida celery?

The Witness: No. I am talking about California, that the increase in weight has in the last three or four months,

I can definitely say it has not been any more than four months, has increased to 60 pounds.

Exam. Brown: I was referring primarily to the southern estimated weights. I knew that there was some time ago a change in the estimated weights on several vegetables.

Mr. Wells: That was in connection with I&S 4577.

Exam. Brown: So that did result in somewhat the same change in the southeast as of that date as you talk about now from California, did it not?

The Witness: No. The Florida increase on rates was considerably before this new increase in California.

[fol. 1217] Exam. Brown: Well, I am saying the increase was somewhat similar, wasn't it? They recognized the fact that the packages, the estimated weights were not correct?

The Witness: The weights were not the same as increased in Florida. This 20 percent increase for California was in excess of the weight increase in Florida.

Exam. Brown: Well, they use a different type of package on celery from California.

The Witness: That same increase in weight, Mr. Examiner, was for the same Howard crate that they use in Florida. Naturally, we try to handle as many Sturdees and they do not have as many Sturdee Crates in Florida.

Exam. Brown: All right.

By Mr. Fitzgerald:

Q. Now, do I understand, Mr. Goldstein, that this package you are referring to is the same package now at 60 pounds estimated weight or published weight as it was at 50 pounds?

A. That is correct. In fact, it is even a little more. They have now eliminated a certain percentage of the bulge, and it is a little smaller package. I mean, the same size container but not the bulge they used to allow them to have at the 50 pounds.

Exam. Brown: Who is responsible for the bulge situation?

The Witness: Of course, Mr. Examiner, the shippers all try to do a better job, and everyone tries to get out a

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[fol. 1218] better package and, naturally, they do that so that their brands can outsell the others; they are for the bulge. I think the carriers now, to eliminate some breakage, which they claim is due to this bulge in the crates, have asked them to cut down their bulge; not only in celery did I talk about, but also in lettuce and carrots and any other commodities they have.

In other words, they used to allow about a two or three inch bulge, and they now cut it down to an inch, an inch and a half bulge.

Exam. Brown: There is no tariff provision requiring that, is there? It is voluntary action on the part of the shipper?

The Witness: No. I understand that if they do not conform with the bulge regulations, they will put on a special rate, what they call a penalty rate.

Exam. Brown: Is that in the tariff?

The Witness: Yes.

Mr. Wells: Wasn't that as a result of the decision in the carrot case, Mr. Goldstein?

The Witness: Would you repeat that, please?

(The reporter read the pending question.)

The Witness: No, I do not know, but I think it is Docket 29645.

By Mr. Fitzgerald:

Q. Well, now, Mr. Goldstein, let us see what the effect of this increased estimated weight is. You have said now [fol. 1219] it is the same package?

Mr. Miller: Mr. Examiner, I should like to object at this time to any further testimony on estimated weights or other factors along a line haul rate.

Exam. Brown: It being your theory, perhaps, that the line haul rates are not involved in this proceeding?

Mr. Miller: That is right.

Exam. Brown: I do not believe anybody has ever made a definite ruling on that, have they?

Mr. Wells: Mr. Examiner, we have contended all the

way through there cannot be a justification of the proposed unloading charge without a justification of the through charge consisting of the line haul rate and the unloading charge.

Exam. Brown: At the prior hearing, we received numerous exhibits showing rates from the various origins, the various destinations. Those are in evidence in this case. I do not believe that I would reach any different conclusion so far as my ruling is concerned with respect to that type of evidence. The estimated weights are a part of the rate. You have rate evidence in this case. I am not going to exclude any evidence of this type. By that ruling, I do not mean that I am taking the position one way or the other as to whether or not the rates are a part of this case.

Mr. Miller: I had forgotten about that prior testimony and therefore withdraw the objection.

[fol. 1220] Exam. Brown: All right. You may proceed. Answer the question. Do you recall the question, or would you like to have it repeated?

(The reporter read the pending question.)

By Mr. Fitzgerald:

Q. It is the same package today that you have always bought, is that correct?

A. That is right. I answered that question.

Q. Now, in 1944 a car containing 504 Sturdee Crates at 50 pounds would give a total weight to the car of 25,200 pounds. That is correct, is it not?

A. That is right.

Q. And at the rate of $1.84, which is the line haul rate, the actual rate per package would be $1 to you, is that correct?

A. Well, depending on the class of the refrigeration. If it was just a dry top-iced car, it would be a cheaper rate.

Q. Well, consider the 242.

A. Well, the rule 242, that is just the top-iced, and you pay the carrier for the use of the car, besides the top ice that is injected into the car, inserted in the car. Of course, if you have them on the rule 247, that is two icings in transit, why naturally there would be an additional increase

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in that because the carriers now are charging you more for your ice than they did at that time. The same applies to standard refrigeration. The rates have increased so that would make it more per package.

[fol. 1221] Mr. Fitzgerald: May I go off the record a moment?

Exam. Brown: Off the record.

(Discussion off the record.)

By Mr. Fitzgerald:

Q. That 504 crate car received by you in 1944 would average what amount of freight per crate?

A. $1.06.

Exam. Brown: What car are you talking about?

The Witness: PFE-24495, containing 504 crates, total freight paid was $537.97.

Exam. Brown: Received when?

The Witness: That car was received on December 26, 1944.

Exam. Brown: At Philadelphia?

The Witness: At Philadelphia, sir.

Exam. Brown: Go ahead.

By Mr. Fitzgerald:

Q. And the published weight per crate was 50 pounds?

A. 50 pounds.

Q. And the transportation rate was $1.84?

A. That is correct, sir.

Q. And what refrigeration?

A. That had two refrigerations at 242 and 247.

Exam. Brown: You are talking about rules now?

The Witness: The rules now, yes, sir.

By Mr. Fitzgerald:

Q. Now, what do you have to say about the shipment of a similar car of celery under similar conditions at the [fol. 1222] present time, under the present estimated weight?

A. We received PFE-43913 on September 16 containing 417 crates of celery at a cost of $712.82 or $1.70 per crate.

Q. Now, what is the total weight of that car as you were billed for it?

A. Well, this car only contained 417 crates. The total weight was 25,020 pounds.

Q. And how does that billed weight compare with the billed weight of the previous car?

A. Well, the billed weight of the previous car was 504 crates and 25,200 pounds.

Q. But in effect, you have received only 417 crates of the same merchandise as to which you formerly received 504 crates?

A. That is correct.

Q. But the railroad has received a transportation charge based upon what, in effect, is a 30 percent increase over and above the increase in their tariff?

A. Yes. The rate, of course, today is $2.26 a hundred. Of course, you are talking about 30 cents. It is really $1.84, which was previously $1.75.

Q. I said 30 percent, Mr. Goldstein.

A. Yes, 30 percent. The present rate is $2.26 a hundred.

Q. Now, Mr. Goldstein, without going into them, do you know of your own knowledge that the same situation exists to a varying extent in the other commodities, for example, carrots?

[fol. 1223] A. There was an increase here, I think, a year or more ago on Texas carrots. That was increased from 68 pounds to 80 pounds.

Exam. Brown: Same type package?

The Witness: Same type package, sir, and just recently, the last ten days, there was an increase on lettuce from California from 76 pounds to 78 pounds.

Exam. Brown: Were these changes estimated weights—did they result from an order of the Interstate Commerce Commission?

The Witness: I would say so.

Exam. Brown: Do you know?

The Witness: I do not know, but I would naturally think that they could not increase any weights without the

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authority of the Interstate Commerce Commission.

Exam. Brown: Well, it is just a guess on your part. All I want to know is whether the carriers did this on their own volition or whether the Commission required them to do it.

Mr. Fitzgerald: It is conceded that this was a matter of tariff revision.

Exam. Brown: I grant you it would be a matter of tariff revision. All I am trying to find out is whether or not the carriers initiated the changes in the estimated weights or whether the Commission required it. The witness does not know. That is all we can do about it.

[fols. 1224-1234] Mr. Fitzgerald: No further questions.

Exam. Brown: Cross examine.

Cross examination.

By Mr. Miller:

Q. Will you state, Mr. Goldstein, how many carloads of produce you received a year?

A. I judge our receipts would vary between 12 and 15 hundred cars. You are talking about me, individually, Mr. Miller?

Q. Yes.

A. Yes, that would be our total.

Exam. Brown: No truck shipments are mixed up in that now, are they?

The Witness: No, sir. We are not in a position to handle any trucks.

Exam. Brown: What I mean is we have been translating carlots and truck lots.

The Witness: No. These are all carloads that either arrive at the produce terminal or were diverted in transit and sold to other markets.

Exam. Brown: All right.

Mr. Miller: No further questions.

Exam. Brown: You are excused, sir.

(Witness excused.)

[fol. 1235] Exam. Brown: On the record. Mr. Dougherty has been previously sworn.

CHARLES J. DOUGHERTY having been previously sworn, testified as follows:

Direct examination.

By Mr. Montgomery:

Q. Will you state your name and address?

A. Charles J. Dougherty; reside at 181 Chandler Street, Philadelphia 11; business address, Delaware Avenue and Wolf Street, Philadelphia 48.

Q. And what is your business?

A. I am vice-president and treasurer of the Philadelphia Terminals Auction Company.

Q. And you are appearing here today as a witness on behalf of the auction receivers of Philadelphia?

A. That is correct.

Q. And how long have you been connected with the produce industry in Philadelphia?

A. In the past thirty years.

[fol. 1236] Q. And how long have you been connected with the auction receivers and familiar with their type of business?

A. Since February of 1944.

Q. Since that time, you have been with the auction company?

A. That is correct.

Q. Prior to that, did you have any experience or contact with the auction receivers, as such, in the City of Philadelphia?

A. I operated my own business on Dock Street and naturally came in contact with those who are members of the auction receivers, but never participated in any of their meetings.

Q. But you are familiar with the situation as it has existed for a great many years in Philadelphia?

A. That is correct.

Q. Will you describe briefly the facilities available to and being used by the auction receivers in Philadelphia as to the railroads in question?

A. Well, on the Pennsylvania Railroad we use A platform for the unloading of fruit for auction with the excep-

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tion of the lower end which is used by the railroad for construction of platforms for their cars, while the A platform is used practically for the display of auction commodities. The extreme end, the salvage freight from the produce terminal is sold, but there is no private sale merchandise unloaded on their A platform. And at the B&O, B&O Reading Terminal at Delaware Avenue and Wolf, the auction commodities are unloaded on the front portion [fol. 1237] of the platform. The rear of the platform is used for hardware or less than carlot freight, and I believe a portion of it is leased to a forwarding company, but the front part of it is exclusively for auction commodities.

Q. Is that the extent of the railroad facilities used by the auction receivers?

A. That, plus the track alongside of these terminals where a partial unload is sometimes ordered and the contents and the car remains at the side of the terminal, not for truck delivery, but for awaiting further order to complete the unloading or to put back the samples in the car. That is the extent of that.

Q. Are these facilities to which you refer facilities from which the merchandise is delivered to a platform known as the auction platform?

A. That is correct.

Q. And there are no team tracks in that location?

A. No, sir.

Q. And how long has that situation prevailed of practically the same facilities?

A. Well, since the construction of the present produce terminals about 23 years ago there has been no change in the method of unloading the fruits which our company sells, neither has there been any change in the facilities of any of the three delivering carriers at Philadelphia.

[fol. 1238] Q. You have a memorandum there, Mr. Dougherty. Will you just give us the contents of the memorandum? I furnished a copy to the Examiner and one to counsel for the railroad. Then we will develop in some more detail from it.

Exam. Brown: Off the record.

A. (Reading) Since the construction of our present pro-

duce terminals about 23 years ago, there has been no change in the method of unloading the fruits which our Company sells, neither has there been any change in the facilities of any of the three delivering carriers at Philadelphia. The fruit is unloaded and piled in the very same manner. In cases of fruit that is sold according to sizes, the sizes are segregated as per manifest, and in the case of straight lading, such as grapes, it is piled in lots of 101 packages, but never is it piled to conform with our sales unit, which is 20 packages.

In piling, the carriers use a standard pattern for each commodity and they do not perform any special services as the samples are opened by the auction company employees, and only during the past two years has the adjective "special" been applied to any of these services.

The fruit, prior to 1926, was unloaded on piers from floats, and on many occasions it was necessary to cancel our sales as the weather would not permit the unloading of the cars and the railroads had to pay many claims due to delay and market decline. The piers on which the fruit was unloaded [fol. 1239] were adjacent to the Dock Street and Callowhill Street markets and the railroads, for their own protection, decided to build produce terminals quite some distance from these markets and continued to do the unloading as a part of the line haul rate.

While we have team track facilities for a large number of cars, these will not accommodate the larger tractor trailer trucks which haul a large percentage of our fruit to distant points, neither will these tracks hold the number of freight cars as formerly, as the length of the cars has been increased. These tracks were laid our nearly 25 years ago, when horse-driven vehicles were used generally, but with the changeover to modern tractor trailers, the team track is inadequate as two of these trailers oftentimes make it impossible for any other vehicle to enter a driveway and causes considerable congestion and confusion.

The manner in which the fruit is unloaded for auction is a great advantage to the carriers as the cars are released immediately and all broken or bad order packages are immediately repaired and put back in their proper lines, and those impossible to repair are removed from the lading.

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This method of handling the repairing is much more economical for the carriers as it would be physically impossible for the carriers to do such an efficient job on team track and would increase the amount of the claims considerably.

Since the assessment of their unloading charges in No-
[fol. 1240] vember of 1948 to August 31, 1949, we have handled 8123 cars, and for the same period, November 1, 1947, to August 31, 1948, we handled 8496 cars. This shows quite a decline in spite of the fact that fresh fruits were in much greater volume during the last ten-month period. The approximate amount of the unloading charges assessed on the 8123 cars sold at auction is $325,000. During the same ten-month period, the carriers have been unloading cars for the Railway Express Agency at a cost of $15.70 regardless of the commodity, whereas the trade has been assessed an average of $40 per car and in several instances an express car has been unloaded alongside of a freight car which contained the same number of packages and which were piled in the same manner by the same labor, and this we feel has always been discriminatory.

We have, however, been advised by the local agents of the carriers that effective with shipments of September 23, the Railway Express Agency will no longer charge for the unloading but that the delivery carrier will render a separate bill for the unloading, thereby increasing this charge in some instances by more than 300 percent.

After the inception of these charges many conferences were held with the officials of the carriers, protesting these charges and endeavoring to make some arrangement whereby we could rent the facilities we were using and turn the unloading over to an outside contractor. On December
[fol. 1241] 8th the Auction Receivers held a meeting and passed a resolution demanding that our company take over the unloading of the fruit which we sell for their account. This resolution was passed on to the carriers and we were officially denied this privilege.

Q. Mr. Dougherty, will you tell me when the merchandise comes in by train, it comes into these auctions, along the auction platform, tell me just how the cars are handled from the time they come into the yard until there is delivery

made to the auction company on behalf of the auction receivers?

A. Well, the auction company receives the orders from the auction receivers as to what they are going to offer for sale the following morning. The railroads accept these orders from the auction company and not from the individual receivers. The individual receivers, however, do have the right at any time during the night, and prior to the unloading of the car, of cancelling, but they do not have the right of ordering for sale or unload. We have an order clerk who sets orders for the following day's sale up to 4 p.m., on Saturdays up to 2:30 p.m. We in turn notify the carriers, give them the car numbers, the contents in the consignee's name as to the cars which are to be unloaded for sale the following morning.

Q. Now, when is this merchandise delivered or made available to the auction company by the railroad?

A. The following morning.

Exam. Brown: What following morning? After receipt? [fol. 1242] The Witness: The following morning after we order. We order and our order will go in this afternoon for unloads, and they are made available to the auction company tomorrow morning or some time in the interval.

By Mr. Montgomery:

Q. And how are they made available to you?

A. They are made available after they have performed the recoopering and put the recoopered packages back in the line, in their proper lines, and we feel as though the recoopering has always been considered as part of the transportation and, therefore, until these packages are recoopered and put back in the lines, we contend that they are not available to us. In fact, we are not presented with a bill of lading until after this repairing has been completed.

Q. Then the railroad by railroad labor does unload and recooper the packages on to the auction platform, is that right?

A. That is correct.

Q. And until it is unloaded on to the platform and re-

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coopered, you have not had access to it or no means of access to this fruit, is that right?

A. That is.

Q. So that you have, until it is delivered to you, you have no responsibility for or possession or control of that merchandise?

A. That is correct.

Q. After it is delivered to you as you have explained from [fol. 1243] the unloading by the railroad, recoopered, you then sign for it?

A. That is correct.

Q. And from that time on, you are responsible for the merchandise and the railroad has no further responsibility for it, is that right?

A. That is correct.

Q. Or control over it?

A. That is right.

Q. And at that time, you take possession and anything done beyond that time is done by your own labor?

A. Our own labor, and after we take possession, we pay the freight for the account of the employees who present the carriers with a check covering the entire freight. Our night men sign for these cars after they have finished recoopering. The railroad removes damaged packages to a point on the platform away from the lading where they are sold separately for the account of the railroad. Our own night men do the sampling. The merchandise is not unloaded in sales units because our sales unit is 20 packages.

Q. So that is the only thing the railroad does to make a simple delivery on the platform, and any stacking, sorting or anything beyond that point is done by you with your own labor?

A. That is correct. A good many of these cars are ordered, Mr. Montgomery, for unload prior to their arrival in Philadelphia. There has been no arrival notice or anything [fol. 1244] given. The car is due to arrive for tomorrow's market. They are ordered this afternoon at 4 o'clock and some time between now and 6 o'clock tomorrow morning, when the trade is permitted on the dock, the car is unloaded, depending on the time when the various trains arrive.

Q. And is that for the advantage of the auction receivers or the railroad?

A. Well, in my opinion, the railroad gains quite considerably by this operation. Damaged packages are repaired, put back in the pile. We oft times have given form 20's on a car whereas many as 100 are made good. Made good means that that is put back in the line and the auction company delivers them to the trade as a good package, and this "made good" is charged against the car. There could be no such a thing as 100 "made good" nor 10 "made good" which we could deliver at any place other than on the platform.

Q. Doesn't it also have the effect of releasing that car so that the railroad will have the use of it more quickly than they might otherwise?

A. Better than 95 percent of our receipts, the entire car is released immediately and before it has even been placed for the so-called 48 hours of free time which would start the following morning at 7 o'clock.

Q. Now, Mr. Dougherty, has that service of the railroad in any way changed since November the 1st of 1948?

[fol. 1245] A. No, it has not.

Q. It has not?

A. No, sir.

Q. And the practice which you have just given us is a practice which has been in effect since the present facilities were constructed in around 1927, is that right?

A. That is correct.

Q. And from 1927 up until November 1st of 1948 the railroad has performed this service of making delivery, and was there any separate charge other than the line haul charge?

A. There was none.

Q. And none was made?

A. No, sir.

Q. And since November 1st, 1948, they are performing the same service which they performed from 1927 up to November 1, 1948, and no other services, and the only change is that they have segregated the charge from the line haul to an unloading charge, is that right?

A. That is correct. This unloading charge in auction commodities averages approximately $40 a car.

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Q. About $40 a car?

A. On the average.

Q. Well, now, Mr. Dougherty, after this order became effective on or about that time, did you have any conferences with your auction receivers with reference to this unloading charge?

[fol. 1246] A. Well, it just seemed as though when the order came out, there seemed to be a meeting every day or every other day of the auction receivers, at which various conferences were arranged with officials of the various carriers. The auction receivers considered the bringing in of an outside contractor to unload the merchandise, of doing their own unloading, of renting the platform, of renting the platforms from both B&O and the Pennsylvania Railroad, but to no avail, and then when the charges were actually assessed and this 30 percent appeared on the bill, which was wholly unexpected by all receivers and the auction company——

Q. What 30 percent?

A. That was the 30 percent increase which had been allowed in the freight rates which the receivers did not feel applied to this $1.50 or $2.00 a ton which had been asked for unloading, which then increased on $1.50 on citrus to $1.95 and $1.75 on deciduous to I believe it was, to $2.27. So then it started all over again, a series of these here daily or every other day meetings of the receivers as to find some ways and means to offset this.

Exam. Brown: Talking about receivers, you are talking about the auction receivers?

The Witness: Auction receivers.

By Mr. Montgomery:

Q. As a result of this charge having gone on, plus the increase, was there any determination as to the costs of [fol. 1247] unloading, as to what the actual costs were and as to whether or not the auction receivers might be able to unload at a cheaper rate?

A. Well, yes. It was generally agreed that the auction receivers could have this merchandise unloaded for their account by private contractors for less than half of what

the carriers were charging. I attended meetings with the auction receivers between the auction receivers and the contact committee of the Pennsylvania Railroad, and with various officials of the B&O Railroad, at which the receivers advanced this information to the carriers, and at each time, why, the proposition, and various propositions were accepted by the representatives of the carriers with the understanding that they would see what could be done for them.

So finally, these various conferences were not bearing any fruit and the auction receivers held a meeting—I believe it was on December 8 of 1948—at which time they passed a resolution demanding that the Philadelphia Terminals Auction Company take over the unloading of the fruit which we were selling to their account.

This resolution was unanimously passed and the carriers were officially notified of the demand made by the auction receivers and the auction company, and we were officially denied this privilege of unloading this merchandise.

Exam. Brown: You are duplicating your testimony now. [fol. 1248] You have already testified to that.

The Witness: Well, I am culminating the end of the meetings of these various auction receivers which counsel had asked me about.

By Mr. Montgomery:

Q. Did you make that application in writing for leave to unload these cars on behalf of the auction receivers?

A. Yes, we did, by registered mail.

Q. And that application was made to whom?

A. I believe it was Mr. Frank Hoskins, general manager, I believe his title is, of the Baltimore and Ohio Railroad, and the other was some director, Martin Clement, President of the Pennsylvania Railroad.

Mr. Montgomery: Mr. Examiner, I have copies of the letters which were written to the railroads and the replies, which I would like to offer in evidence at this time, sir.

Exam. Brown: Do you have extra copies of that?

Mr. Montgomery: I do not, but I can have them made, sir. Do you have extra copies of those?

The Witness: I do not.

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Exam. Brown: We will have a short recess.

(A short recess was taken.)

By Mr. Montgomery:

Q. Mr. Dougherty, will you explain how the auction receivers received this merchandise, as to how it is consigned and handled by the receivers or the auction company [fol. 1249] on their behalf?

A. Well, the auction receivers, mostly by phone, call the auction company and give the car number and give us the road on which it is, and we list it on the book and we print a catalog and we order that carrier to unload that car for sale the following day.

Q. But the bill of lading, how is that made out?

A. Well, most bills of lading are m*ight* out by J. B. Cancelmo & Company, Philadelphia, Pa.

Q. He is one of the auction receivers?

A. Pennsylvania produce delivery.

Exam. Brown: He will be the originally named consignee on the bill of lading?

The Witness: That is correct.

Exam. Brown: And the consignor will be some firm on the Pacific Coast, you say?

The Witness: That is correct.

Exam. Brown: Does that come on consignment?

The Witness: In a good many instances, yes, and some they own it. We print a catalog—where they own it, they own it in the name of piers, where they are the representative for the shipper, why those cars are on consignment.

Exam. Brown: Now, when this citrus is sold, who gets the money for that, originally? Do they pay it over to the auction company?

[fol. 1250] The Witness: When it is sold? The auction company sells and bills and collects.

Exam. Brown: In other words, you sell a carload or sell a lot of 20, say 20 packages; the purchaser of that 20 lot item will remit to the auction company.

The Witness: That is correct.

Exam. Brown: And then who pays the freight bill?

The Witness: The auction company in most instances

pays the freight bill for the account of the receiver to whom we render an account of sales and deduct the amount of freight we pay to the carrier and give him the receipted freight bill which we receive from the carrier.

Exam. Brown: Now, let us assume that you sell an entire carload made up of lots of 20 packages. You get all the money that represents the sale price of those lots, the auction company, is that right?

The Witness: That is correct.

Exam. Brown: From the gross receipts from that carload, you deduct the freight in your final settlement with the consignee?

The Witness: That is correct.

Exam. Brown: In other words, if Cancelmo were the named consignee on the bill of lading, he would receive for that carload of citrus exactly what it brings in auction minus the freight charges?

[fol. 1251] The Witness: And our selling charges.

Exam. Brown: And your selling charges?

The Witness: Yes.

Exam. Brown: Now, those freight charges will include, at the present time, and have since November 1, 1948, unloading charges?

The Witness: No; no.

Exam. Brown: I should like to have you explain what happens there.

The Witness: The unloading charges, the auction company pays the auction unloading charges, and the buyers are assessed a terminal charge and on a per package basis, depending on the type of package, the range is from three to ten cents.

Exam. Brown: What do you mean a terminal charge?

The Witness: A terminal charge since the inception of this unloading charge.

Exam. Brown: You are talking about a proportionate part of the unloading charge when you use the term "terminal charge"?

The Witness: The terminal charge is on the bill to the buyer as a terminal charge. That is the unloading charge.

Exam. Brown: That is the unloading charge?

The Witness: Yes.

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Exam. Brown: Does he pay a pro rata portion of the unloading charge?

The Witness: The buyer has been, yes.

[fol. 1252] Exam. Brown: Now, if the buyer purchases half of the car, he will pay half of the unloading charge?

The Witness: That is right.

Exam. Brown: The consignee then does not bear that unloading charge?

The Witness: No.

Exam. Brown: It is the purchaser of the goods?

The Witness: The consignees—this charge was carried on to the buyers three weeks or approximately November 22nd, after the assessment of these charges. Up to that point, the consignees had paid their own unloading charges and absorbed them.

Exam. Brown: But the consignees have paid in the final analysis the freight charges.

The Witness: Yes.

Exam. Brown: But he does not, in any event, pay the unloading charge?

The Witness: No.

Mr. Montgomery: Not since November 22, 1948.

Exam. Brown: 1948?

Mr. Montgomery: 1948, yes.

Exam. Brown: November 22nd?

Mr. Montgomery: November 22nd, yes. That is when the change went into effect whereby the buyers were assessed their proportionate parts of a package, mechandise bought.

[fol. 1253] Exam. Brown: Now, between November 1, 1948, and November 22, 1948, how were the unloading charges handled?

The Witness: That was forwarded to the consignee and that was deducted the same as freight, and he paid that.

Exam. Brown: In other words, for a period of approximately 22 days?

The Witness: That is right.

Exam. Brown: The consignee bore the unloading charges?

The Witness: That is right.

Exam. Brown: Thereafter, and up to the present time,

the purchasers at auction have paid that, is that correct?

The Witness: That is correct.

Exam. Brown: And they have paid their pro rata share?

The Witness: That is right. And from the 22nd on or at the time these charges were invoked or passed on to the buyers, the auction receivers and the auction company assured the buyers that they would vigorously oppose the assessment of these charges. They have been paid every day since the inception under protest, and a record is kept, and the buyers have been assured if any relief or any elimination can come, that the fight is being made in their behalf.

Exam. Brown: Has that been developed to your satisfaction, Mr. Montgomery?

Mr. Montgomery: Yes, sir.

Exam. Brown: All right. Continue with the testimony.

[fol. 1254] Mr. Montgomery: Mr. Dougherty, the Examiner has asked that we clear up one question which has been raised by the information, that that is as to whether or not the Philadelphia Terminals Auction Company pays any rent to the railroad for the office facilities or any other facilities which they occupy, and in that connection, Mr. Examiner, we take the position that that question is outside of the question at issue here, and are putting it in merely at your request for the information only.

Exam. Brown: And my request was made solely to clarify the record. We had testimony at the prior proceeding with respect to these auctions. I want the whole story.

Mr. Montgomery: Yes, sir.

Exam. Brown: Mr. LaRoe?

Mr. LaRoe: Mr. Examiner, sometimes a lawyer has to object and get himself in wrong with the court by objecting to a question that the court asks, and in this instance, I respectfully submit that this record, as developed, shows very clearly that anything that is done in the way of auction service or auction facilities takes place after railroad delivery has been effected and after the transportation service has been completed.

I can fully appreciate the attitude of the Examiner in desiring to get complete a portion of the record which he feels is not complete and concerning which the Commission [fol. 1255] may have inquired, but if the Commission itself

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had asked this question, I would have to object and reserve an exception, if I can get it, because this water has been muddied, Mr. Examiner; it has been mud-ied by confusing this unloading service with various facility services that have absolutely nothing to do with unloading. And I regret to do it, but I must make my objection to the answering of this question.

Exam. Brown: Now, would you make the same statement, Mr. LaRoe, with respect to special stacking and sorting for which the shippers pay?

Mr. LaRoe: Yes, sir.

Exam. Brown: You realize that that evidence was introduced, that type of evidence, on behalf of the protestants as well as the carriers?

Mr. LaRoe: I realize that, and even my own witness may have offended in that, and to that extent we, too, are guilty, but I want that line clearly drawn.

Mr. Hoffman: Mr. Examiner, I want to join Mr. LaRoe in that position. In reply to comment which you have made, that protestants introduced evidence in connection with sorting, I might say that it is my belief that we did so only because the carriers in connection with the introduction of their cost studies showed that their costs covered also sorting, as well as the unloading, and the record so shows. They were unable to segregate the sorting charge. It be- [fol. 1256] came necessary, therefore, for the shippers, protestants, to cover that subject.

Now, insofar as the relationship of the auction company to the railroads is concerned, and I speak in behalf of consignors and consignees, it is a collateral matter; it has nothing to do with this issue. We know nothing about it. I, myself, at this time know nothing about the relationship, and we are not interested. We pay the auction company a percentage on the sales, for the service which they render to us, not as a part of transportation, but for the service which they render. We, as consignees and consignors, pay for that.

Now, what relationship the auction can make with the railroads or what bargaining or negotiations they can enter into, I think, is not germane to these proceedings in any way.

Exam. Brown: You take the position, as I understand it, that the evidence at the last hearing with respect to stacking and sorting was pertinent in the light of the cost exhibits which were introduced by the respondents?

Mr. Hoffman: Yes.

Exam. Brown: So, in that respect, that evidence would be pertinent, so we could segregate, perhaps, as between the costs for unloading proper and the costs for special stacking.

Mr. Hoffman: I might say in reply, the question of who performs the sorting services has nothing to do with the auction necessarily.

We find that in Philadelphia, for example, the sorting is [fol. 1257] performed in some cases, at least, by arrangements which the consignee may make through others.

In other words, I see no relationship to an issue of sorting as it relates to the cost studies, and the matter of the relationship between the auction company as lessee and the carriers as lessor.

Exam. Brown: I would say here that this type of evidence is pertinent, but not necessarily conclusive. In other words, it is up to the Commission to determine how much weight should be given to this situation. So far as the particular subject we are talking about now is concerned, namely, the rent paid by the auction company, if any, for their auction facilities, rooms, and what privileges are accorded to them by the railroad, that particular question was asked at the oral argument by the entire Commission, and one or two of the Commissioners at the last oral argument.

I do not know whether they realized that it was pertinent or not pertinent at the time. There was no objection then made to the question.

Mr. LaRoe: Then the Examiner is taking no position one way or other on that issue here?

Exam. Brown: That is it exactly. I am taking no position one way or another. I am going to get a complete story in this case if I can get it. We can cull out later what is pertinent and what is not pertinent. At the present [fol. 1258] time, I am going to rule that that evidence should be received at this time.

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Mr. LaRoe: Will you grant me an exception on that, Mr. Examiner?

Exam. Brown: Yes, sir. You are allowed one on that.

Mr. Fitzgerald: And may I associate myself with the remarks of Mr. LaRoe?

Mr. Augello: I also want to go along with Mr. LaRoe's remarks.

Mr. Van Arnum: I should like to, also, just for a matter of record, appear in that objection. I should like to refer, just as a matter on which to base this exception, to the Commission's order in I&S Docket No. 3596, allowances for stacking fresh fruits and vegetables at New York, where the Commission in its decision says: "On the contrary, it shows that instead of requiring the consignees to unload the shipments from the cars as ordinarily required on carload shipments, respondent undertakes to make delivery to spaces assigned to the consignees on the pier; its stevedores pack the packages in those spaces. It appears from this record that at that point respondent has fulfilled its legal obligation as to delivery."

And on that paragraph we base this exception.

Exam. Brown: You can argue these matters in your brief. I am not saying whether I agree with you or disagree with [fol. 1259] you at this time.

Mr. Wells: Mr. Examiner, I believe my objection was placed in the record earlier in line with Mr. LaRoe's.

Exam. Brown: That is right. Now, if the witness will answer.

Mr. Montgomery: This is also over my objection. As I stated in the beginning, I am offering it under protest. I put the question, but I said I am putting it under protest because I do not see the relevancy of the issue. I take the same position that the others took.

Exam. Brown: I did not understand that there were any strings attached to your question at the present time. So far as Mr. Dougherty is concerned, he need not answer. I will permit the respondents to bring that evidence in at the time they present their case, and at that time I will rule on it, and I will expect them to bring it in.

Mr. Smith: We shall do so.

Exam. Brown: I want a whole story on it, not a half story. That is all on that subject.

Mr. Montgomery: I have no objection to an answer.

Exam. Brown: I am not going to force you to put any evidence in that you do not wish to do.

Mr. Montgomery: I will ask Mr. Dougherty to answer it so we can give our story at Philadelphia.

By Mr. Montgomery:

Q. Will you answer the question, Mr. Dougherty, as to [fol. 1260] what rent we pay for the auction rooms or facilities?

A. We rent from B&O Railroad certain space, including our offices, our printing department, for which I believe we have a lease which was negotiated two years ago. I am quite certain, though, that this lease does not cover the auction rooms as the auction rooms are considered a public produce terminal. I do know that we have a lease in our files covering the auction room at the Pennsylvania Produce Terminal. As to what was tendered in order to negotiate this lease, I do not know. We do have a lease covering that auction room or the facilities we use for auction.

Mr. LaRoe: You mean it may be a free lease?

The Witness: It may be, possibly. I do not know. We have a lease.

Mr. LaRoe: But you are not able to say whether any consideration was paid for the lease?

The Witness: No, I am not, Mr. LaRoe, because that was arranged and consum-ated prior to my association with the auction company, I do know——

Mr. Pettijohn: I submit, if he is going to talk about a lease that the lease be made a part of the record in this proceeding.

Exam. Brown: He says he does not know anything about this lease, so there is no use in putting the lease in.

[fol. 1261] Mr. Goldsmith: It is in the files of the auction company, though, Mr. Examiner.

Exam. Brown: This witness is testifying as to matters within his knowledge. All I want to know is in connection with having this matter developed. If this witness does not

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know, I do not expect him to answer and I do not expect him to develop it further.

The Witness: I do know we have a lease. I am not too familiar with the terms of just what is in the lease. I know we have a lease. I know we have a lease with the B&O Railroad, and to the best of my knowledge, the auction room in that particular lease is not covered. I do know that we have tried to lease property from both these roads and they claim that it is not within their province, that the Commission would not allow them to lease this property. I do know of several instances where platforms at the Pennsylvania Railroad were tried to be leased, and that was impossible. Several trade associations have tried. It has always been referred to as public market places of such stations. Now, that is to my knowledge.

Exam. Brown: In other words, if I were to write a report on this now and determine that this particular type of evidence is pertinent in this case, it would be necessary for me to state that I do not know what, or the record does not show what the situation is with respect to the auction com- [fol. 1262] panies, whether they pay rent for their space or any provision is in the lease or anything else. In other words, we haven't received any information from you, sir, which is helpful.

The Witness: Well, I have testified, Mr. Examiner, that we are not currently paying rent for the use of the auction room. That is a matter of record.

Exam. Brown: Of the Baltimore & Ohio?

The Witness: Of the Baltimore & Ohio, too. I believe and I am positive that our lease covers facilities which we use for our office and our printing department, and naturally, I haven't had occasion to be reading the leases. I agree with counsel that I do not see what bearing it has on the case, but, however, the question was asked, so I am giving you the best, to my knowledge.

Exam. Brown: We are not arguing that point now. That is completed. But your testimony, then, at the present time is that you do not pay rent to the B&O Railroad for auction property, is that right?

The Witness: For the use of the auction rooms, that is right.

Exam. Brown: Well, that is all I am talking about, for the use of the auction property, and is your testimony the same with respect to Pennsylvania?

The Witness: That is right.

Exam. Brown: In other words, you do not pay rent for [fol. 1263] any of your auction facilities to any carrier; is that right?

The Witness: That is right.

Mr. Montgomery: Now, wait a minute now. Your auction facilities, your office rent.

The Witness: At the same building.

Exam. Brown: Well, I am not interested in the office rent. All I am talking about is the auction rooms.

The Witness: Well, I understand——

Exam. Brown: That is why I used auction facilities. I will agree 100 percent that the properties that you rent are not within the scope of this proceeding, except to the extent that they are connected with this transportation, and then I have an open mind on that. But I want this evidence in this case in case somebody finds it is pertinent. I do not want to be criticised for leaving something out that might perhaps be properly in the evidence.

Now, with respect to these letters——

Mr. Montgomery: I wish to offer those in evidence, sir.

Exam. Brown: I understand you will have copies made of them and served upon the respondents and other parties.

Mr. Montgomery: I will, sir.

Mr. LaRoe: Will they be exhibits?

Mr. Montgomery: They will be exhibits. And I wish you would mark them, sir; first will be a copy of a letter dated December 8, 1948, addressed to Mr. Frank G. Hoskins, gen- [fol. 1264] eral superintendent of the Baltimore & Ohio Railroad. That will be Exhibit 109.

The reply from Mr. Hoskins, B&O Railroad, dated December 14, 1948, will be Exhibit 110, and a reply from the Pennsylvania Railroad Company, dated December 22, 1948, which has reference to the same letter. The carbon copy of the letter addressed to the Pennsylvania Railroad I do not have but, Mr. Dougherty, will you tell us whether that is an exact copy, excepting as to the name?

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The Witness: That is correct.

Mr. Montgomery: That will be Exhibit 111.

Exam. Brown: Do you have copies of those in the files so you can leave those with the official reporter?

Mr. Montgomery: I do not have copies of these originals.

Exam. Brown: Off the record.

(Discussion off the record)

Exam. Brown: These letters and copies will be received in evidence, if there be no objection.

Mr. Miller: There is no objection.

Mr. Donadio: I have no objection.

Exam. Brown: I understand that copies will be furnished to respective counsel.

(Protestant's Exhibits Nos. 109, 110 and 111, inclusive, Witness Dougherty, received in evidence.)

Exam. Brown: Any more questions on direct examination?

[fol. 1265] By Mr. Hoffman:

Q. Mr. Dougherty, did I understand you to say that the auction company is the consignee of the cars moving to the auction?

A. No. I do not recall saying that they were the consignee.

Q. The auction company is not the consignee?

A. The auction company acts in behalf of the consignee.

Q. Now, the auction company charges a fee to the consignee for the auction services?

A. That is correct.

Exam. Brown: Mr. Hoffman, in the course of your remarks with respect to the objection you just made, you referred to the fact that we pay a percentage of the cost of the auction fees or that you pay the auction fees. I wonder if you meant that.

Mr. Hoffman: Well, I meant to say that the consignor-consignee pays the auction fee. It is shown as a deduction on the return of the proceeds remitted to the consignor.

By Mr. Hoffman:

Q. Am I correct, Mr. Dougherty?

Exam. Brown: If you know.

A. I did not quite get the question.

(Question read by reporter.)

By Mr. Hoffman:

Q. Take, for example, a shipment of deciduous fruit moving from California to Philadelphia auction, Pacific Fruit Exchange consignor-consignee; Pacific Fruit exchange directing the auction company to sell that car; would, under [fol. 1266] those circumstances, a fee be charged to the Pacific Fruit Exchange as consignor-consignee for the services rendered by the auction company?

A. Yes.

Q. And the fee would show by way of the deduction of the proceeds remitted to the Pacific Fruit Exchange consignor-consignee?

A. That is correct.

Exam. Brown: That is when the consignee and the consignor are the same party.

Mr. Hoffman: That is right.

Exam. Brown: What happens when the consignor and consignee are not the same party? In other words, let us say a company on the Pacific Coast bills a carload of goods to Cancelmo. The auction is made. You bill Cancelmo your auction fee or take that into account with him, is that right?

The Witness: Yes. We deduct it from the account of sales which we render to Cancelmo, if that is the method used in that.

[fol. 1267] Exam. Brown: You do not know what happens after that as between Cancelmo and the consignor?

The Witness: No, I do not.

Exam. Brown: This is not a reparation case, so we are not interested in that feature.

By Mr. Pettijohn:

Q. Is that charge published in any tariff by the railroads?

A. Are auction charges published in the tariff by the railroads?

Q. That is right.

A. Not that I know of.

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Exam. Brown: Cross examine.

Cross Examination.

By Mr. Miller:

Q. When the auction company prepares these goods for sale, they put out a catalog covering the sale, do they not?

A. That is correct.

Q. On that catalog, the packages are divided into lots of 101 packages, are they not?

A. In the case of a straight lading of grapes, that is the way. If it is a case of a sized article, there is usually a number of various sizes in those lines.

Q. In any case in which any particular size and grade is equal to or greater than 101 packages, the commodity is listed on the catalog in a 101 package item, is that correct?

A. In any case?

[fol. 1268] Q. Yes.

A. No, that is at the discretion of the receiver for whom we sell.

Q. Can you explain to me why it is that you use the unit of 101 packages?

A. Well, it is the unit which has been used prior to my connection with the auction company, to where they consider that selling it in lines makes a better sale, as the buyers call out of line so-and-so. However, that was formerly used, Mr. Miller, before I went with the auction company.

Q. When a unit of merchandise is put up for sale at the auction, is that unit the line on the catalog?

Mr. Goldsmith: Just a minute. Mr. Examiner, I do not know how the sales conduct has anything to do with these charges of loading. I mean, it is all right to go into the question of whether space used for auction purposes is paid for in the station, and so forth, and he is under cross examination and nothing has been brought out about how these sales are conducted or how the fruit is sold after delivery is made. I do not know what all this cross examination has to do with that purpose.

Exam. Brown: You may be right, technically. At the

prior hearing, however, Mr. Dougherty testified definitely with respect to these auction sales. He even introduced in evidence an auction catalog showing various lots of [fol. 1269] produce; is that correct?

The Witness: No, I did not introduce the catalog.

Exam. Brown: You did not introduce a catalog showing the setup of a particular auction day at Philadelphia?

The Witness: I do not believe I personally introduced it.

Exam. Brown: Well, somebody from Philadelphia did that.

Mr. Hoffman: Well, the railroads introduced that.

Exam. Brown: No, somebody from Philadelphia. It might have been Mr. Pease in behalf of the Department of Agriculture.

Mr. Pease: No, Mr. Hampton, in behalf of the railroads.

Exam. Brown: Well, my recollection must be wrong then. I thought that Mr. Dougherty introduced that.

The Witness: No, I did not.

Exam. Brown: But, nevertheless, Mr. Dougherty did testify with respect to the method of selling at Philadelphia. I do not think there is any doubt about that, is there?

The Witness: Oh, no. I answered the questions that were asked of me, I believe.

Exam. Brown: You asked the questions of your own counsel.

The Witness: I am not sure. I think it was on cross examination.

Exam. Brown: You mean to say that on direct examination you did not testify as to how auctions were conducted at Philadelphia?

Mr. Wells: Mr. Examiner, is the witness to be cross [fol. 1270] examined on a former hearing or just on direct examination today?

Exam. Brown: I am trying to develop this situation so I can make a ruling which will be logical in the li-ht of the hearing before. Now, Mr. Dougherty put this type of evidence in at the prior hearing. The evidence certainly would be pertinent now, if it were pertinent then.

The Witness: Well, I did not put any catalog in, I know that, as any evidence.

Exam. Brown: Well, one was put in there. I remember the exhibit very well. I do not know who put the exhibit

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in, but I know that it was in there, and I am fairly sure that you testified as to the methods of selling at Philadelphia. That is why you took the stand, was it not?

The Witness: Well, I do not recall answering any questions under direct examination. I could have under cross examination.

Exam. Brown: Be that as it may, the witness may answer.

The Witness: Will you repeat that again, Mr. Miller, please?

Mr. Goldsmith: May I have an exception?

Exam. Brown: Under the rules of practice, counsel are automatically afforded exceptions.

By Mr. Miller:

Q. When a unit is placed for sale in the auction rooms, is it true that that unit is shown on an individual line in [fol. 1271] the catalog?

A. Yes. In most cases the man who gets the bid has a choice of the catalog, and he calls it out by number. That is his selection when the bid is finally knocked down to him. The catalogs are listed on a board in the order in which they are sold.

Q. Now, when you are selling something in the auction room, aren't you selling a particular line on the catalog of some kind?

A. No. You are selling a choice of the catalog.

Q. When the railroad unloads the packages on the floor of the platform, into what groups are the packages arranged?

A. Into what groups? In the case of citrus, they are arranged into size groups, and in some instances cars have two brands, first choice and second choice, which has, necessarily, two-sized groups.

Q. Aren't they sorters on the platform in accordance with the line shown on the catalog?

A. They are sorters on the platform in accordance with the line.

Q. Shown on the catalog?

A. Well, the manifest—I am not too sure that a car is unloaded before the railroad company has the catalog in a

good many instances. They are assorted according to sizes and brands, and they are catalogued on our catalog accord- [fol. 1272] ing to sizes and brands from the manifest.

Exam. Brown: Is the auction catalog made up with respect to those particular lines in any respect?

The Witness: The actual——

Exam. Brown: The actual catalog?

The Witness: And those lines? No, the lines are placed on the floor with chalk to compare with the printed catalog.

Exam. Brown: Now, wait a minute. Your catalog—you have intimated to me—was prepared after that is unloaded.

The Witness: Oh, no. I said that the railroad does not get the catalog in a good many instances until after they have unloaded it.

Exam. Brown: Is the catalog prepared before the unloading takes place?

The Witness: Yes. The catalog is prepared from the manifest.

Exam. Brown: It is printed in advance in other words?

The Witness: Yes.

Exam. Brown: You get notice that a car is expected to arrive?

The Witness: That is right.

Exam. Brown: And there is no effort made to place the materials on the floor in line with that auction catalog. That is the question of Mr. Miller, as I understand it.

Mr. Miller: I understood the witness to say he did not [fol. 1273] know.

Mr. Pettijohn: Is there a special charge for that sorting at Philadelphia?

The Witness: A special charge for it?

Mr. Pettijohn: Yes.

The Witness: No, not to my knowledge.

Exam. Brown: Is there any charge for it?

The Witness: No, there is not.

Mr. Pettijohn: In other words, that is comprehended in the line haul rate?

The Witness: Yes, sir.

Mr. LaRoe: I am wondering, Mr. Examiner, whether there is a little confusion here. Perhaps the confusion is due to my own ignorance of the details of these deliveries,

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but Mr. Laux testified about diagram loading of a car, with the car being marked so-and-so, and he said that the freight was taken out and put on the pier in accordance with the diagram loading. Is that the way it works with you? Does the manifest show the diagram loading of the car?

The Witness: No. The railroad foreman marks the floor where car so-and-so is going to go, and that starts from there, is sized——

Mr. LaRoe: In other words, is there no division of that car according to grades or sizes marked on the floor of the pier?

[fol. 1274] The Witness: No. The numbers are put on the floor after the car is unloaded and the boxes are marked to conform with the printed catalog which they may get after the entire car has been unloaded. The catalogs are printed at our B&O place, the printing department, and the Pennsylvania Railroad, when they unload on Oregon Avenue, one of our men at a later date comes up and gets the catalogs for the cars which have been on the Pennsylvania. Then they mark the boxes in crayon and they mark the floor in chalk to conform with the catalog which we printed the afternoon before.

Exam. Brown: Is this statement in modification of your previous statement that you do not know as to the hookup between the placing on the flor and the auction catalog?

The Witness: I did not recall that I said I did not know. Mr. Miller said that I answered I did not know.

Exam. Brown: That is what Mr. Miller said, and you did not take him to task with respect to his statement. Do you know?

The Witness: Do I know what?

Exam. Brown: Whether there is any hookup between the chalk marks on the pier floor and your auction catalog?

The Witness: Oh, there are marks which are put on the pier floor after the car is unloaded, the numbers, to conform with the catalog which has been printed.

Exam. Brown: Who puts them on?

[fol. 1275] The Witness: Who puts them on? The auction company employees.

Exam. Brown: The railroad does not put the marks on?

The Witness: No. They mark the space where the car of oranges goes here, where it starts, and another one, so

many feet away. If they are going to put a car of lemons in the next spot, that spot is marked.

Exam. Brown: Now, you say the auction catalog is made up prior to the unloading?

The Witness: That is correct.

Exam. Brown: How does the carrier know where to stack these particular lots if he has not received advance information as to where a particular lot is going to be?

The Witness: I answered Mr. Miller in some cases that the car is unloaded at the Pennsylvania before they have the catalog because all catalogs are printed at the B&O. The B&O Railroad employees have access to the printing room and they can get the catalogs out even before the car is put in to start to unload.

Exam. Brown: Now, answer this, and let us get this record straight if we can: are the packages placed upon the pier floor in line with the auction catalog?

The Witness: Are they placed——

Mr. Miller: Are they grouped on the floor in conformity with the lines shown on the auction catalog?

[fol. 1276] The Witness: Yes. The 150's are in one pile, if that is what you mean, Mr. Miller, and the 176's are in the next one, and the 200's are in the next one, and that is the way the catalog is printed and that floor is marked after the car is unloaded and the pile is counted and the pile is marked, so that the same line numbers are on the floor and on the catalog.

Mr. Pettijohn: Are you using the terms "manifest" and "catalog" synonymously?

The Witness: Well, we print a catalog from the manifest which the consignee gives us.

Redirect Examination.

By Mr. Montgomery:

Q. Now, Mr. Dougherty, you have notice of a certain car going to arrive at a certain date; then you make up the catalog, that is, before 4 o'clock today for the sale tomorrow; is that right?

A. Correct.

Q. The railroad receives that car and unloads it on to the pier——

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Mr. Augello: You mean dock or platform.

By Mr. Montgomery:

Q. (Continuing)—on the platform, unloads that on the platform, and each car is kept separate on the platform, the same as before taking off the car?

A. That is correct.

Q. And then after it has been piled on your platform and [fol. 1277] you have taken delivery, your employes then mark the car number and lots on the floor in front of that merchandise?

A. That is correct.

Exam. Brown: Now, your question was after you have taken delivery. Is it conceded in this proceeding that the auction company has taken a delivery prior to its sale?

Mr. Montgomery: Prior to the sale?

Exam. Brown: Yes.

Mr. Montgomery: Yes.

By Mr. Montgomery:

Q. Upon the completion of the unloading on to the platform by the railroad, the auction company at that time takes delivery and possession of that merchandise and it is sold thereafter; isn't that correct?

A. That is correct.

Exam. Brown: You paid the freight charges before sale or afterwards?

The Witness: We sign them and we are responsible for the freight charges. We have the usual 24-hour credit. We pay them that day.

Exam. Brown: In other words, after the material is placed upon the platform, you are responsible to the railroad?

The Witness: After they finish recoopering and putting them back in their proper lines, then our man signs for them and we are responsible.

Exam. Brown: And they look to you for the freight charges?

[fol. 1278] The Witness: In most instances. Some of the consignees pay their own freight.

Exam. Brown: That, notwithstanding the fact that the goods are not consigned to you but to some other consignee?

The Witness: Definitely.

Mr. LaRoe: At the risk of repetition, does the railroad do any grouping of the freight by 150's, 176's, 200's or other sizes, or is that done by your own men?

The Witness: That is done by the railroad.

Mr. LaRoe: That is done by the railroad?

The Witness: Yes.

Mr. LaRoe: As a part of the delivery?

The Witness: As part of the unloading, not the delivery.

Mr. LaRoe: As part of the unloading?

The Witness: Right.

Mr. Pettijohn: Is that grouping based upon a manifest of the car?

The Witness: Yes.

Exam. Brown: You might have answered this question, but if you did, it did not register with me. Are the groups on the car floor, on the platform, rather, that is, after delivery by the carrier, after unloading and placing on the platform, are those groups in strict conformity with your auction catalog?

The Witness: Yes, and in a good many instances there [fol. 1279] are apt to be corrections. One lot will run short, one lot will run over and take care of the bad orders which have been removed.

Exam. Brown: As a general rule, almost uniformly, then, with few exceptions, the materials on the platform coincide with your auction catalog in every respect?

The Witness: That is right.

Exam. Brown: As to line, number and other details?

The Witness: That is the way they come out of the car, too, in most instances. In most every respect, the 150's, the top is what comes out of the car, because that is the way the car is manifested and that is the way it is printed.

Mr. Goldsmith: You mean to say that they are unloaded the way the car is packed?

The Witness: Yes, in a good many instances, in most instances, the 150's, or the top of the car, are the first one

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or two boxes out. In other words, you do not get 188 out and then get that.

Mr. Goldsmith: Then there is actually no separate grouping made by the railroad?

The Witness: No. It is just segregation as to sizes.

Mr. Goldsmith: As they come out of the car, they stack them up right along the platform?

The Witness: There is nothing special about this. It is the same as they have been doing for 50 years.

[fol. 1280] Exam. Brown: Yet you say it coincides in every respect with the auction catalog?

The Witness: No. The catalog is printed from the manifest.

Exam. Brown: I do not care how or when the catalog is printed. I just want to know if the groups on the platform are the same as the groups in your auction catalog. I do not care when it was printed.

The Witness: Yes, that is right.

Mr. Goldsmith: And your catalog is printed from the manifest.

The Witness: Definitely.

Mr. Goldsmith: And the manifest is the way the car is packed.

The Witness: Definitely.

By Mr. Wells:

Q. Where does the railroad get the manifest?

A. The railroad get the manifest?

Q. Yes.

A. Well, the railroad does not have the manifest of the car, I do not believe.

Q. Take, for example, a carload of citrus. That simply says so many boxes of oranges or grapefruit, as the case may be.

A. That is right.

Q. And it does not say how many of each size or how many of a particular grade or brand or anything else, usually, does it?

[fol. 1281] That is correct, it does not.

Q. And the railroad has no information at the time they

unload that car as to how many of a particular size may be in that car, do they?

A. They do if they get our catalog at B&O, yes. They do not have any manifest on it.

Mr. Goldsmith: Assuming they do not get the catalog?

The Witness: They do not get the catalog, they do not have the information.

Exam. Brown: Is it the practice of your company to give the railroads your catalog?

The Witness: Yes, it is available for them there.

Exam. Brown: I asked you if you give it to them; is it the practice?

The Witness: Yes. They have the authority to go into the printing room and get the catalog.

Exam. Brown: In other words, is it understood that they can go into the printing room and get the catalog?

The Witness: It is understood we have a man there. Yes, the catalogs are available.

Mr. LaRoe: Mr. Examiner, I submit that the evidence is confusing because the witness testified a few minutes ago very clearly that the B&O has access to those catalogs because the printing is done at the B&O station, but that the Pennsylvania does not have access to those same catalogs. [fol. 1282] Now, are you changing your testimony on that?

The Witness: No.

Mr. LaRoe: Well, then, the fact is that the Pennsylvania does not have the catalog in advance.

The Witness: Well, I believe, I answered Mr. Miller to the extent that there are cars unloaded on the Pennsylvania prior to their having the catalogs. I believe that is the way I answered it.

By Mr. Wells:

Q. Well, then, Mr. Dougherty, if they do not have the manifest, they do not have the catalog, how in the world can the Pennsylvania stack it on the pier according to the catalog?

Mr. LaRoe: That is the question.

A. Well, it comes out of the car that way, and the 150's

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come out first in most instances, and we have to mark the floor and the boxes afterwards.

By Mr. Goldsmith:

Q. And it does not make any difference whether you print a catalog or you don't print a catalog; that is the way they are laid on the platform, is that correct?
A. That is correct.

By Mr. LaRoe:

Q. The same way they were laid in the car?
A. That is correct.

By Mr. Pettijohn:

Q. Well, the fact is that the auction market gets the manifest and the railroad does not, is that a fact?
[fol. 1283] A. That is correct; that is right.

Exam. Brown: Well, I wish to state right here and now that this evidence is far from satisfactory with respect to the hookup between the auction company and the railroads, so far as putting these packages on the floor is concerned.

Now, whether there is an exception made to this or not, I consider that particular evidence very pertinent in this case, as to what duties the railroads performed prior to delivery.

Mr. LaRoe: Yes, so do we.

Mr. Miller: Mr. Examiner, I will assure you that I will have a witness available hereafter to competently explain exactly how this business is transacted. I would like to ask just one further question, Mr. Dougherty.

Recross examination.

By Mr. Miller:

Q. Do you recall whether or not you previously testified that it would be difficult for auction receivers to operate with a team-track delivery because the various grades and sizes were all mixed up in the car?
A. That they were all mixed up in the car?
Q. I believe that was your testimony at the last hearing.

A. Well, if you have the record and that is my testimony, that is perfectly clear, but may I modify it?

Q. Yes.

A. Because there is no way in which we can take the man who buys the 150 and say, "You must go to the car [fol. 1284] first and get these because the man who buys the 288's is waiting." That is where the confusion comes, after a fellow comes for 288, to break the car, and in front of him is 176—they are then pushed aside until he gets the 288, and if they are pushed aside, then somebody comes for the 150's which have been pushed aside.

Mr. Pettijohn: Who marks the platform for which the different sizes and grades are to be put in at Philadelphia?

The Witness: The auction company employees.

Exam. Brown: Do they mark them before the goods are unloaded?

The Witness: No, sir.

Exam. Brown: Do they, when they take the goods, then mark them?

The Witness: That is right.

Mr. Miller: I have no further questions.

Exam. Brown: No redirect?

Redirect Examination.

By Mr. LaRoe:

Q. Is there any instance where the grouping of the different sizes on the platform are different from what the grouping was in the car? Let me put it this way: suppose you have three sizes of fruit in the car. In one end of the car you have 150's; in the middle of the car you have 176's, and in the rest of the car you have 200's. Now, when the railroad takes those out of the car, that same order is pre- [fol. 1285] served, is it, when it is put on the floor of the pier, or is the order ever changed, the grouping changed?

A. Well, the grouping is changed, Mr. LaRoe. Lots of times the catalogs have to be changed. We oft times have three boxes of 150s listed, and there are none in the car. We have——

Q. Wait a minute now. You say there is a grouping of 150's listed and there are none of those in the car?

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A. Yes.

Q. Well, the railroad cannot put them in there if they are not in the car?

A. Certainly not. That is what I tried to say, that these catalogs are corrected after the car is unloaded.

Q. Is there any instance where the railroad changes the grouping of these commodities as they were in the car, in placing them out on the platform, rearranging the fruit?

A. No; no.

Q. They always follow the order that was in the car?

A. That is right.

Q. And if there is any putting in of 150's to fill out an order or something like that, that is done by the auction company?

A. Put in to fill out?

Q. Yes.

A. No, we do not.

[fol. 1286] Q. Well, who does? You said there might not be 150's and you want 150's. Who does that?

A. Well, the line is crossed through the catalog; that is just erased, and you will find that possibly another size has been increased by three or something. The railroad is concerned with the total account rather than the various sizes, and the catalog is tacked on the car and the correction is made on it. We sign for the total number of packages, not the number of various sizes.

Q. Well, that indicates that some adjustment is made in the grouping on the platform to make it conform to the catalog?

A. Definitely.

Q. Who does that adjusting?

A. That is done by our night men.

Q. And not by the railroads?

A. No, sir.

Mr. LaRoe: That is clear.

By Mr. Pettijohn:

Q. Mr. Dougherty, when the car is placed, you have a manifest of the contents of that car, do you not?

A. Yes.

Q. And when you have a manifest of that car, you mark off on the unloading platform the space according to grades and sizes, do you not?

A. No. We do the marking after the car comes off.

Q. But you mark it from your manifest, do you not?

[fol. 1287] A. Yes, that is right. The catalog.

Q. So the manifest of the car that is submitted to you is the basis upon which the stacking is done?

A. That is right.

Exam. Brown: You mark it from the manifest or do you mark it from your auction catalog?

The Witness: Well, the auction catalog is a duplication of the manifest.

Exam. Brown: Exact duplication?

The Witness: Yes, so far as number and sizes.

By Mr. Van Arnum:

Q. Where do you get the manifest? Does the shipper mail the manifest to the consignee or to you or does he put it inside the car, on the car door?

A. No. We get our manifest from the consignee.

Q. A shipper mails it to him and the consignee gives it to you?

A. That is right.

Exam. Brown: You get your manifest from the consignee?

The Witness: Yes, or receiver.

Exam. Brown: That is sent to him before the car reaches Philadelphia?

The Witness: That is right.

By Mr. Van Arnum:

Q. Doesn't the shipper also personally pin the manifest to the inside of the car door?

A. At times, but that is not generally done.

[fol. 1288] Exam. Brown: Any further questions of Mr. Dougherty?

By Mr. Pettijohn:

Q. There seems to be some confusion as to how this plat-

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form is marked. Do you mark the platform when the cars are received for unloading prior to the unloading or after the unloading?

A. The railroad man spots the platform where the car starts. That is one mark down the center. The lines are marked by the auction company employees.

By Mr. LaRoe:

Q. When?

A. After the car has been unloaded and delivery has been made to us.

Mr. Donadio: What kind of a mark does the railroad put on the floor?

The Witness: White chalk mark, where the car starts.

Mr. Donadio: Does he put a car number?

The Witness: He puts some number there, I am pretty sure.

Mr. Donadio: Does he put a car number down?

The Witness: I believe he does put the car number down.

Exam. Brown: Do you know? Do you know whether he puts the car number down?

The Witness: No.

Exam. Brown: Testify to facts within your knowledge, please.

The Witness: Well, he marks the floor as to where the car starts and he knows the number of cars that has to [fol. 1289] unload that night.

By Mr. Pettijohn:

Q. Well, is there a space provided or set out for the number of different packages according to commodity and sizes by the auction company or by the railroad?

A. The spaces are marked that should take care of the entire lading and that is all, and then the car is stacked sideways from the center, each center towards the doors. In other words, the unloading starts at the center of an aisle, and that is stacked toward the door, and in the same manner for the length of the platform. Now, the night foreman of the railroad knows that he has 10 cars of oranges or 20 cars of oranges and he so marks the spots, each mark for a car, not for the individual lines in the car.

Q. Well, who assumes the responsibility for grading and sizes, the railroad company or the auction company?

A. The railroad company lines them up as to sizes and as to brands. The auction company employees put the mark on the box and on the floor as the line.

Q. The auction company simply designates the total amount of space necessary for unloading the car?

A. The railroad designates the total amount of space necessary.

Exam. Brown: That is all, Mr. Dougherty. Thank you.

(Witness excused.)

Mr. Augello: How about a recess, Mr. Examiner?

Exam. Brown: All right.

[fol. 1290] (A short recess was taken.)

ALFRED SHAPIRO was sworn and testified as follows:

Direct Examination.

Mr. Montgomery: Mr. Examiner, I have a statement here from which Mr. Shapiro will read in reference to his cost studies of unloading at the B&O pier. I have furnished a copy to Mr. Miller, and I will have to get additional copies of it.

Exam. Brown: Will you see that I get one?

Mr. Montgomery: I will, sir.

Mr. Donadio: I should like to have a copy of that statement.

Mr. Montgomery: Yes, I will have more of them made up tonight.

Mr. Donadio: I should like to have it now, if it is to be offered in evidence.

Exam. Brown: Off the record.

(Discussion off the record.)

Exam. Brown: On the record.

By Mr. Montgomery:

Q. State your full name and address.

A. Alfred Shapiro. I live at 22 Delaware View Avenue, Trenton, New Jersey.

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Q. And what is your business and business address?

A. I am a member of the firm of M. Rosen Company, 2nd and Dock Streets, Philadelphia.

[fol. 1291] Q. And what is the nature of their business?

A. We are receivers of fruits, deciduous fruits mostly from the west coast, mainly the northwest, Washington and Oregon.

Q. Auction receivers?

A. Auction receivers.

Q. How long have you been in this business?

A. I have been with the firm of M. Rosen Company since its inception, which was in December, 1938. Well, it is practically January 1, 1939.

Q. And are you familiar with the handling of the fruit produce at auction at Philadelphia terminal?

A. Yes, I am.

Q. A while ago the question was raised as to why there is 101 lots named in the catalog. Can you explain that?

A. Yes. That was just a custom of procedure in the sale. As Mr. Dougherty has testified, the auction unit is twenty or multiples of twenty. Some years ago we used to list items such as grapes in 100 lots and when we sold these, when 70 was sold in a line and there would be 30 remaining, it was very hard to get a buyer to take 30 lots, 30 boxes, and usually the price would drop so that you had to drop your price on your other fruit that you had already sold. So the receivers adopted the custom of 101 in a line, so that if there were 70 sold, there would be 31, and the buyer would take 20 and you could sell 11, the remaining 11. [fol. 1292] That is just a custom of sale.

Q. Mr. Shapiro, have you made a study of the unloading costs at the B&O pier or B&O auction platform?

A. Yes, I have observed the unloading and I have analyzed what I think is the cost of unloading.

Q. Will you give the Examiner the results of your time study on the unloading of 25 cars, I believe it was, on——

A. September 18th?

Q. September 18, 1949?

Exam. Brown: Can't we put this in as an exhibit?

Mr. Montgomery: Yes, sir.

Exam. Brown: We have a considerable amount of statistics.

Mr. Montgomery: Yes, sir.

Exam. Brown: I think it would be much more preferable to put it in as an exhibit.

Mr. Montgomery: I will so offer it as an exhibit.

Exam. Brown: That includes the explanation as well as the table on the second sheet?

Mr. Montgomery: It does.

Exam. Brown: Do you have the original there, sir?

The Witness: I have the original, but I have figures on mine, pencil figures.

Exam. Brown: Then we will accept this copy as an exhibit, provided there are no exceptions to it. That will be 112.

[fol. 1293] (Protestant's Exhibit No. 112, Witness Shapiro, marked for identification.)

Exam. Brown: Now, it is understood that you will serve copies of this exhibit on counsel of record in this case?

Mr. Montgomery: Yes, sir.

Exam. Brown: And do that within ten days.

Mr. Van Arnum: Is that also understood as to these other documents that have been used here?

Exam. Brown: It is understood as to the documents as to which it was agreed that copies be made. So far as these photographs are concerned, I understand that the parties haven't asked for additional copies of those.

Mr. Van Arnum: That is what I want to know, whether we have to find out what these are, write and ask for them, or whether they are going to be furnished automatically.

Exam. Brown: The copies of this exhibit will be furnished automatically. I have handled each exhibit as I have gone along. Copies of this exhibit will be served upon the parties within ten days, all counsel of record.

Now, this is an explanation of your cost figures on the second sheet?

The Witness: That is right.

Exam. Brown: Have you had time to read that, Mr. Miller?

Mr. Miller: Yes, sir.

Exam. Brown: Have you any objection?

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[fol. 1294] Mr. Miller: No, sir.

Mr. LaRoe: Just for information, Mr. Examiner, is my understanding of this correct, that it comes out with a total cost per car of $11.29?

The Witness: That is what we figure that to be, the cost of the labor involved.

Mr. LaRoe: That is just labor cost?

The Witness: Labor cost.

Mr. Pettijohn: It does not purport to show the excess cost of cars moving to team-track delivery over, or the excess cost of cars moving to auction market over team-track delivery?

The Witness: No, it does not. We did not analyze the team-track delivery.

Exam. Brown: This is all with respect to the platform delivery?

The Witness: This is all the auction platform delivery.

Mr. Montgomery: At the B&O?

The Witness: At the B&O Reading Terminal.

By Mr. Montgomery:

Q. Have you any further explanation to make as to this statement?

A. I think this statement is self-explanatory, and I think it shows the actual labor costs involved in unloading a car of fruit.

Exam. Brown: There being no objection, Exhibit 112——

Mr. Donadio: Well, I do not know.

[fol. 1295] Exam. Brown: Well, I asked Mr. Miller if he had any objection. I heard no objection from any other counsel. We will entertain objections now if you have any to make, sir.

Mr. Donadio: Well, I am sort of a representative of the B&O at this proceeding, as well as one of the respondents, and I have not had an opportunity to object, if I feel that it should be objected to.

I should like to ask some questions about it first.

Exam. Brown: You have completed the direct examination of this witness?

Mr. Montgomery: Yes, sir.

Exam. Brown: Any other questions on direct?
Mr. LaRoe. Well, only for clarification.

By Mr. LaRoe:

Q. Did you observe personally the unloading of these cars?

A. Yes, I did.

Q. Did the railroad labor that was unloading these cars arrange the boxes or group them on the platform according to any size or grade?

A. There being no platform, they group them according to the manifest, to the catalog, the catalog which they secured that particular night.

Exam. Brown: Read that answer, please.

(The reporter read the last answer.)

Exam. Brown: Which was it, the manifest or the catalog? [fol. 1296] The Witness: Well, it is the catalog which is similar to the manifest, which the receiver gives to the auction company.

Exam. Brown: I do not know whether it is similar or not. I want to know what your testimony is on it.

The Witness: Well, as a receiver, we call the auction company, we give them the manifest and they in turn print a catalog from the manifest that we submit to them.

By Mr. LaRoe:

Q. Well, it would seem to follow from that that the catalog always is the same as the manifest. Is that a fact or isn't it?

A. I would say it is.

Q. Well, the manifest does not show anything except the makeup of the car, does it?

A. The manifest shows the sizes and the quantities of each size, car number and the brand, and the grade. It is a shipper's manifest.

Q. Well, if there are 100 boxes of one kind and 150 boxes of another kind or size, doesn't the railroad at Philadelphia, in placing them on the platform, group them or arrange them according to such sizes as shown in the manifest?

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A. Yes, they do.

Q. Without charging anything extra for it. That is included in the delivery, isn't it?

A. In the delivery, that is right; always has been.

By Mr. Pettijohn:

Q. Not having a copy of the exhibit, I should like to [fol. 1297] ask the witness if his costs were predicated upon a time study and the wages paid for the different classes of labor?

A. It is. This is a time study, and the labor costs per hour paid to these different types of help, and that is what this exhibit shows.

Mr. Donadio: Now, you do not mean that that is the pay that was paid to these men?

The Witness: Well, if you will read this, you see, we say in here the average pay of railroad labor of this type did not exceed $1.50 per hour.

Mr. Donadio: But, that is different than your answer that you just made to Mr. Pettijohn that that is what is paid these men.

The Witness: No no. He asked me if this is based on a time study and wages paid.

Mr. Donadio: And wages paid.

The Witness: Well, not the actual wages paid, no.

Mr. Donadio: That is what I am trying to get at.

The Witness: No, not actual wages paid.

Mr. Donadio: The whole thing is assumed, isn't it? You are assuming that.

The Witness: Well, the times are not assumed. It is actual timing.

Mr. Donadio: The actual time?

[fol. 1298] The Witness: The assumption of the rate is assumed. The rate is assumed.

Mr. Donadio: The rate is assumed?

The Witness: That is right.

Exam. Brown: And the pay is assumed?

The Witness: Well, the rate of pay is assumed, naturally.

Mr. Donadio: Well, don't you know? Is it my turn to

ask questions? Is everybody through? I want to ask some questions.

Exam. Brown: Yes, it is your turn. It is cross examination, that is right. Proceed.

Cross examination.

By Mr. Donadio:

Q. Don't you know that as a matter of fact this unloading is performed on a piece work basis, so much a car, irrespective of the number of hours and the number of minutes it will take to move the car?

A. We know the B&O works on a piece car basis.

Q. That is a fact, isn't it?

A. That is a fact, yes.

Q. And do you know that that is brought about by reason of the labor agreement between the railroad and its employees?

A. I do not know that for a fact. I never saw it. I would not know that.

Q. The same is true about the supervisor—supervisory employees which you have included in your statement. That [fol. 1299] is an assumed figure?

A. That is an assumed rate.

Mr. Pettijohn: What do you mean by assumed; on any percentage or arbitrary?

Mr. Donadio: Just an arbitrary assumption.

The Witness: We assume we can hire men at that rate to do that type of work.

Mr. Donadio: I think that the answers that this witness has made in response to my questions are sufficient to show that the exhibit is invalid; it is not representative of the actual cost of operation; and therefore should be excluded and I object to it.

Mr. Pettijohn: I submit, Mr. Examiner, that the witness has testified that the hours of the different classes of labor employed in this operation are actual. Now, if there is any disagreement as to the rates of pay which are properly applicable to the hours and service, it is encumbent upon

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the railroad company to show what the actual cost performing this service is.

Mr. Donadio: Well, we will do that, but on the time situation, it does not mean a thing because the basis for the cost to the railroad is a per car basis, so much per car.

Mr. LaRoe: Can we not save time by having it agreed that this is not intended as a study of the actual cost to the railroad but rather as an estimate, the best estimate the [fol. 1300] witness is able to make as to what it would cost him if he hired the labor to do it himself at the rate which he assumes would be applicable and applied to the actual hours which he observed? Isn't that an accurate statement?

The Witness: That is right. And I should like to add, if you will read further on, we have worked this down to the per ton basis, which the rate is based on, from our time and from our figures.

Mr. Donadio: Time does not mean a thing so far as the reaching of a proper cost of the railroad's unloading operation is concerned, because it is on a per car basis and it does not matter whether it takes 15 minutes, an hour or two hours to unload that car—so much an hour. So, any cost study based on so much an hour does not mean a thing. It does not help anybody in this case. It just confuses the matter, and I submit that the exhibit is invalid.

Mr. Pettijohn: Well, I submit it goes to the accounting and efficiency of operation at Philadelphia.

Exam. Brown: Any objections to this exhibit? Mr. Miller, do you have any objection now?

Mr. Miller: Mr. Donadio stated my objection.

Exam. Brown: You, a few moments ago, stated you had no objection. Now you have changed that?

Mr. Miller: It has been corrected.

Exam. Brown: You have changed that in accord with Mr. [fol. 1301] Donadio, is that what you mean?

Mr. Smith: As a B&O operation, I think Mr. Donadio should make the objection, and I concur in the objection.

Exam. Brown: Exhibit No. 112 will be received in evidence but will be considered in connection with the remarks

and criticisms of Mr. Donadio. Is that satisfactory, Mr. Donadio?

Mr. Donadio: I will accept the Examiner's rule and course.

Exam. Brown: I asked you if that is satisfactory. I asked you if my ruling is satisfactory, that it would be considered in connection with your criticisms and objections to it.

Mr. Donadio: Perfectly all right.

Exam. Brown: All right, sir.

(Protestant's Exhibit No. 112, Witness Shapiro, received in evidence.)

Exam. Brown: Any further questions of this witness?

By Mr. Miller:

Q. Mr. Shapiro, can you tell me why you chose Sunday to make this cost study?

A. Sunday night is the heaviest unloading for Monday sale and we wanted to get an idea on Sunday night what the heaviest time is that it takes to get the heaviest load out.

Q. Does your study include all the cars that were unloaded that night?

A. No, it does not. We just took the first 25 cars that were unloaded.

[fol. 1302] Q. Do you know how many cars were unloaded that night?

A. Offhand, I do not know the total number that night. We did not work through the whole night.

Q. Then what your study amounts to is a study of the times spent in unloading 25 cars on a particular night, the heaviest night of the week, is that right?

A. Yes.

Exam. Brown: He did not state that. He said it was the heaviest night for unloading for Monday morning deliveries. Now, if he did not mean that, correct it. You did not say it was the heaviest night of the week?

The Witness: No, heaviest for Monday morning delivery.

By Mr. Miller:

Q. Was it the heaviest night of the week?

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A. It usually is the heaviest night of the week, Sunday night.

Q. And that was the reason you chose it, wasn't it?

A. Naturally.

Mr. Pettijohn: Do you know the number of cars unloaded in comparison with the average for the year or the season?

The Witness: The total number of that particular day?

Mr. Pettijohn: Yes.

The Witness: Well, I do not recall the exact number that was unloaded that particular Monday, but that would be—Monday's sale would be the largest, the heaviest sale for any week, and I do not know what it would compare to the average for the year.

[fol. 1303] Mr. Pettijohn: Well, if you do not know what the average unloading for the year is, how do you know whether or not that is greater or less than would be the average?

The Witness: Well, I do not think that is the heaviest night of the week. They have heavier quantities on other Mondays. I do not recall it, though.

Mr. Pettijohn: Do you think it was a typical day?

The Witness: Absolutely.

By Mr. Miller:

Q. Do you know what commodities were unloaded in these 25 cars?

A. Oh, yes. It is in our exhibit: oranges, lemons, two cars of grapes, two cars pears.

Q. Mr. Shapiro, how did you compute the time stated on your exhibit?

A. Well, we quote the time we started each car and the time we finish. We got the number of minutes it took to unload it and we totalled the number of minutes up. It is right on our statement here.

Q. Can you explain in detail how that operation was performed?

A. Yes, I can. It is just reading this whole statement right over.

Mr. LaRoe: Please don't do that.

Mr. Miller: Don't read the statement all over.
The Witness: Our statement explains the operation.

By Mr. Miller:

Q. How did you determine the time of beginning on [fol. 1304] the first car?

A. We were down at the railroad. I, personally, was at the railroad at 6 o'clock that night, an hour before they actually started to work. They started at 7. I actually waited the breaking of the car and the unloading of the fruit by these gangs and I timed it as they were coming out of the different cars. We show where we started one at 7, finished 7:40; another one at 7, finished 7:40; and so on through our statement.

Q. Well, now, on your time started, what time is that? What actually happened at 7 p.m. on the first car?

A. That is when the doors were opened and the plate was put into the car and they started breaking out and unloading the cars.

Q. And what happened at 7:40 p.m. on the first car?

A. That is when they had everything out, the plate was picked up and all the fruit was stacked in the proper groups.

Mr. Miller: That is all.
Mr. Montgomery: That is all.
Exam. Brown: You are excused, sir.

(Witness excused.)

Exam. Brown: Any other witnesses for the protestants?

Mr. Loos: Mr. Examiner, I should like to call Mr. Nosser. In calling Mr. Nosser, Mr. Examiner, I am doing so with the reservation that I think has been spaciously discussed, [fol. 1305] to present evidence with respect to what happens after the unloading is completed, and which we think is not relevant or material to the real issues in this case but which, however, we think is proper testimony to submit in view of the state of the record here so far, and particularly with respect to the rental of the pier in view of the questions asked in oral argument. And in connection with that, I would like to say on the record that that question was asked of me, and in answering it I answered it in error.

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I was evidently thinking of the time early in my practice when the first case of this kind, of identically the same character of this case, was before the Commission, namely, the unloading at Duane Street, and prior to that time, there had been a rental for the piers.

However, I am sure my error in answering the question that was asked in oral argument did no harm, because at that time Mr. Von Miller corrected the error and gave the correct answer.

We are calling Mr. Nosser to clear up the record on that one point, and in addition, I will ask him regarding another point which my remarks about irrelevant and immaterial do not apply.

Exam. Brown: Have you been previously sworn?

Mr. Nosser: Yes.

Exam. Brown: You testified in a prior proceeding?

[fol. 1306] Mr. Nosser: That is right.

Charles Nosser, having been previously sworn, testified as follows:

Direct examination.

Mr. Loos: Mr. Examiner, not being sure what the prior record is with respect to Mr. Nooser's previous testimony, I may be asking some questions which are repetitious, but I am doing so to be sure that there is no omission.

By Mr. Loos:

Q. How long have you been connected with the New York Fruit Auction Corporation?

A. I have been connected with the New York Fruit Auction Corporation since 1933. I would like to say, Mr. Loos, that the New York Fruit Auction Corporation is an outgrowth of the Connolly Auction Company, which company I was connected with since May of 1919.

Q. And does the service of the New York Fruit Auction Corporation and its predecessor in this market go back even before that date?

A. Yes, 1907.

Q. Now, will you explain where the auction rooms are located?

A. The auction rooms on the Erie Railroad pier at Duane Street are located on the upper floor or second floor over the platform. They are across the hall from the Erie Railroad Company's offices at Duane Street.

Q. And where are they located on the Pennsylvania piers?

[fol. 1307] A. They are identically at the same place, on the second floor of the Pennsylvania Railroad piers in 28 and 29.

Q. Do the auction rooms decrease in any way the space on the pier platforms?

A. None whatever. They are not on platform.

Q. What is the distance between the pier platform and the floor of the auction room, approximately?

A. Oh, I imagine about 50 feet above it.

Q. What auction rooms does your company use?

A. Well, I do not remember the exact number of rooms, Mr. Loos. There are two auction companies operating in New York, as I remember it. To the best of my knowledge, on the Pennsylvania Railroad piers there are eight rooms. We have four and the other auction company has four or the use of four rooms. In other words, we each have four rooms. On the Erie I am not quite sure. I think we still have four and four apiece. He (indicating) said I was right, so I will say that is a definite answer, four and four.

Q. And you say there are two auction companies now operating on these piers?

A. In New York, yes.

Q. Does your auction company pay any rental for these auction rooms?

A. No, sir, we do not.

Q. Has the auction company at any time in the past paid [fol. 1308] rental?

A. Yes, sir, we did.

Q. What was the occasion for the change and the discontinuance of the rental?

A. Well, we paid rent as Connolly Auction Company for the auction rooms on the piers until 1922. At that time

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there were three auction companies in New York. In 1922, shortly after the first of the year, the event of the fourth auction company took place, and all the rooms were under lease, all the auction rooms on the pier were under lease to the previous three auction companies. The fourth auction company asked for space and there wasn't any additional space for them. The three auction companies then in existence refused to give up any of their space because they had it under lease from the railroad. So the railroads required the auction companies to give up their leases at their expiration and did not lease any of the space, did not lease any space to any auction company thereafter, the reason for it being to make room for any and all auction companies that were then in existence or might later come into existence.

In other words, the eight rooms, while there were three auction companies, they had the use of the eight rooms, or they were leased. At that time, I think there were six. There was later some other rooms added, room for the four auction companies was provided. At the present time, [fol. 1309] there is only two auction companies, so that the railroads allow us to use them the way the two auction companies can best get along.

Exam. Brown: I think there is enough evidence along that line now, Mr. Loos. All I am interested in is finding out whether they paid any rent, pertinent or not pertinent.

Mr. Loos: Well, as long as we are developing the situation, I should like to develop it all.

Exam. Brown: All right.

By Mr. Loos:

Q. Have you ever indicated, Mr. Nosser, the willingness of the auction company to pay rent for this auction space?

A. Yes. As a matter of fact, I have not only asked, but at times it sounded like a demand. I have been very anxious for many years now to rent the auction rooms from the railroad. The purpose in my wanting to rent them is to improve them and to wire them for sound and put the proper acoustics in, and one thing or another, to suit my own convenience in operation. But, the railroads have

given me the reason for their lack of desire for a lease that they want to remain in complete control over their premises, which I think is a perfectly good reason.

Q. Why haven't you made the improvements that you mentioned under present conditions?

A. Well, I do not know how long I would be able to use them, because the railroad might tell me that I might not [fol. 1310] use them after I put these improvements in. In other words, I am a day-to-day tenant.

Mr. Loos: Now, that is all I expect to ask, Mr. Examiner, on that subject. Now, I come to a point that I thought would have been developed in the record heretofore, but which has not been, with respect to New York, and I want to ask Mr. Nosser some questions about that, and my remarks about irrelevant and immaterial do not go to this point.

By Mr. Loos:

Q. Mr. Nosser, following the imposition of the unloading charge on November 1, 1948, I believe, what was done, if anything, in the way of making a charge to the auction buyers?

A. Well, as soon as the unloading charge became effective, I made a contract with our receivers or the users of our auction company, and I agreed to assume the expense of the unloading as assessed by the Railroad. I then explained to the trade that the auction commission was insufficient to allow me to assume that expense, and that it would be necessary for us as an auction company to pass on that unloading charge, and not only the unloading charge, but also the sorting charge as it is assessed by the railroad company. So that at the present time the auction company, both auction companies, assess to the buyer on a per package basis the cost of sorting and unloading.

Q. And what is that assessment called?

[fol. 1311] A. It is called a terminal charge.

Q. And how is that billed?

A. It is billed right on the auction bill as the charge at the end of the extensions, or the calculation for the amount of fruit each buyer bought is added, the amount of his fruit

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is added as one total, the number of boxes on his bill and the rate according to the weight of each package, and there is an added charge termed as a terminal charge—this additional amount appears—and then his bill is totalled as one bill.

Q. And for illustration, what is the rate of the terminal charge on a box of citrus fruit from California, for example?

A. California citrus, all citrus, grapefruit, lemons and oranges, is 10 cents per package.

Q. And that rate is sufficient to approximately equal the unloading charge and a sorting charge on that box, is that correct?

A. Well, I do not want to be technical with you, Mr. Loos. It is just short of sufficient. The auction company comes out with a little red ink on it, but on the per car basis, it is so small that it does not warrant charging another penny.

Mr. Loos: That is all.

Exam. Brown: Cross examine.

Mr. Miller: I have no questions.

Mr. Smith: I have just one question, Mr. Nosser. I [fol. 1312] would be obliged if you could answer it for me.

Cross examination.

By Mr. Smith:

Q. You referred to the eight auction rooms on the Erie Railroad piers.

A. Yes, sir.

Q. Could you tell us approximately, if you know, what the seating capacity of those rooms is?

A. Well, they vary. There is one room that is larger than the others. The others are approximately the same size. I would imagine the larger room, which we use for California citrus, will seat around 300, and the other rooms, my judgment is that they run anywheres from 150 to possibly 180 or 190, 200, maybe.

Mr. Smith: Thank you, sir; that is all I have.

The Witness: (Continuing) Something of that size.
Mr. Smith: That is all.
Exam. Brown: That is all, Mr. Nosser, thank you.

(Witness excused.)

Mr. Loos: That is all, Mr. Examiner. Mr. Examiner, may I say this: Mr. Nosser suggested that I ought to make this clear. I think it is perfectly clear on the record, that the testimony by Mr. Dougherty with respect to what happens at Philadelphia does not necessarily have any application to what happens in New York. I think the record is clear enough on the New York end.
[fol. 1313] Exam Brown: Let the record speak for itself in that respect. Does that conclude the protestants' case in chief?
Mr. Loos: So far as I know, that concludes protestants' case.
Exam. Brown: No other protestants wish to offer evidence at this time?

(No response.)

Exam. Brown: The respondents will proceed.
Mr. Smith: The respondents' first witness will be Mr. Hodkinson, whose exhibits are now being distributed.
Exam. Brown: Off the record.

(Discussion off the record.)

E. A. Hodkinson, having been previously sworn, testified as follows:

Direct examination.

By Mr. Smith:

Q. Kindly state your name and business address.
A. E. A. Hodkinson, 1 Park Avenue, New York City.
Q. Are you the Mr. Hodkinson who testified at the previous hearing in this docket?
A. I am.

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Q. What is your present position in the railroad industry?

A. I am manager of the Commerce Bureau Truckline, the Commerce Bureau of the Eastern Railroads.

Q. Have you prepared or had prepared under your direct [fols. 1314-1316] supervision certain exhibits marked for identification 113 through 126, inclusive, which have been distributed?

A. I have.

Q. Kindly proceed to identify each of the exhibits that you just referred to and explain them to the extent that they do not speak for themselves.

Exam. Brown: Let the record show that these exhibits were numbered, distributed and identified off the record and have been marked for identification accordingly.

[fol. 1317] PROCEEDINGS OF SEPTEMBER 29, 1949

E. A. HODKINSON resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Smith:

Q. Mr. Hodkinson, will you kindly explain your exhibits 113 to 126, inclusive, to the extent that they are not self-explanatory?

A. This series of exhibits is designed to bring up to date the information shown on similar exhibits which I introduced on the prior hearing. Exhibit 113 makes a simple comparison of the percentage of the total United States carload shipments of fruits and vegetables terminated in the eastern district. We use 1946 to 1948 inclusive.

Exhibit No. 114 is confined to the four roads that were interested in these unloading charges in New York City and the three roads that were interested in them at Philadelphia. It shows for the period November 1, 1947, to August 31, 1948, and for the same period, November 1, 1948, to August 21, 1949, the total rail receipts at New York City

and at Philadelphia; the unloads by the rail carriers at their facilities; and the unloads by the consignees on team tracks and private sidings.

Q. Mr. Hodkinson, will you kindly refer to the second line of the heading of Exhibit 114 and state whether there [fol. 1318] is a typographical error, and, if so, what is it? The last figure in the second line.

A. The last figure in the second line should be 1949. The heading should read: "Statement showing railroad and consignee unloadings for period November 1, 1947, to August 31, 1948, and November 1, 1948, to August 31, 1949." That corresponds with the body of the exhibit.

Exhibit 115, consisting of 21 pages, brings up to date the prices shown in exhibit No. 14, which I introduced at the prior hearing.

Exam. Brown, With respect to exhibit 114, are those carloads?

The Witness: Yes, sir.

Exam. Brown: Does that include express shipments?

The Witness: Express shipments excluded.

Exam. Brown: Excluding?

The Witness: Yes, sir.

A. (Continuing) This Exhibit 115 illustrates, as did the prior exhibit No. 14, the price variations from day to day and from week to week.

Mr. Wells: May I ask one point? Are all of the prices therein auction prices, as you indicate in your heading, or are not some of them not auction prices?

The Witness: They are all auction prices, Mr. Wells, taken from the New York Daily Fruit Reporter or the Pro- [fol. 1319] ducers Price, current.

A. (Continuing) Exhibit No. 116 shows the auction prices at Philadelphia on vegetables for the period June 11 to 17, 1948. This is similar to Exhibit No. 15 which I introduced in the prior hearing.

117 is similar to 116, except as to the period. 117 covers the period June 10 to 16, 1949. This is similar to our old exhibit 15, and here again it shows the price variations from week to week and month to month.

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Exam. Brown: What does the figure "S" mean under the heading "Washington Apples, Dollars per Box"?

The Witness: One hundreds to two hundred sixteens. That is the sizes.

Exam. Brown: What does "S" mean?

The Witness: Size.

Exam. Brown: And "NS" means no sales?

The Witness: No sale.

Mr. Augello: Mr. Hodkinson, before you go any further, on the first page of Exhibit 115——

The Witness: I was up to 117, Mr. Augello.

Mr. Augello: I know, but I want to get this clear. Mr. Wells tried to get the answer, but I do not think he got it. You say "auction prices."

The Witness: Yes.

Mr. Augello: Is that true of all commodities shown on [fol. 1320] that page?

The Witness: Which page?

Mr. Augello: The first page of Exhibit 116.

The Witness: There are no prices on the first page of the exhibit, Mr. Augello.

Mr. Augello: Yes, but prices are shown in the other pages.

The Witness: Yes. These are all auction prices.

Mr. Augello: Do you want us to believe that all these prices shown on letters, for instance, are auction prices?

The Witness: Yes.

Mr. Augello: Don't you know that lettuce is not sold at auction or any other vegetables outside of tomatoes sold at auction? You have heard the testimony here of the witnesses, the vegetable witnesses.

The Witness: Perhaps you misunderstood the question. These prices that I have shown here are either the auction prices or the sales prices as taken from the sales publication.

Mr. Augello: In other words, auction or private sales.

The Witness: Yes.

Mr. Augello: That is different. Now, with that explanation, you can go ahead.

The Witness: But the point remains, the fact remains, that whether they are auction or private prices, there is a

wide fluctuation from day to day and week to week, and that is the purpose of the exhibit.

[fol. 1321] Mr. Augello: Well, just a minute, Mr. Hodkinson. I think that your first sheet should be amended to read: "Auction prices and private sale prices."

The Witness: I would be very glad to do it that way.

Mr. Augello: Will you do that and eliminate confusion?

The Witness: Yes, sir.

Exam. Brown: You used the words auction or private sales prices.

Mr. Augello: There is enough confusion in this case now, and we do not want to get any more. We do not want the Commission to get the idea that all these fruits and vegetables are sold at auction and then look at Exhibit No. 22 with all these fancy photographs that the railroads put in and give them the idea that everything is sold at auction.

Exam. Brown: Let us go off the record for the purpose of correcting these exhibits.

(Discussion off the record.)

A. (Continuing) I think I had commented on Exhibit 117. That covers the auction or private sales prices at Philadelphia on fruits and vegetables for the period June 10 to 16, 1949.

Exhibit 118 is similar to 116 and 117, but it covers the period August 10 to 16, 1949.

Exhibit 119 is similar to Exhibit No. 16 in the prior case and it shows the retail price range, New York City, fresh vegetables, for the second weekly release of each month, [fol. 1322] and here, for convenient reference, I have gone back and reproduced a lot of the figures shown in old Exhibit 16. The high and the low prices are indicated by a dash underneath the figure.

Page 2 of the exhibit, for illustration, under "beans, snap," the last block on the exhibit, the high price for 1949 was 35 cents. That was in January, January 19. The low price was 10 cents, which was reached in August. These exhibits show a wide fluctuation in retail prices just as the prior exhibit did.

Exhibit 120 is a partial reproduction of Exhibit 17 with the later figures as shown. The system followed in making

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up the exhibit is the same as that that I explained in connection with Exhibit 119.

Exhibit 122 is similar to old Exhibit 119, and this exhibit is designed to show the prices for the period shown, namely, March, 1939, up to January 17, 1939, and in the last column of the exhibit I have shown the percentage which the column reprises, that is, the March 15, 1949, prices are in the column 9 prices, that is the reason before the war, January 17, 1939. These percentage increases range from 63.4 percent in the case of lettuce to 210.3 percent in the case of sweet potatoes.

Mr. Miller: Mr. Hodkinson, I think a moment ago you referred to an old exhibit No. 119. Is that what you meant?

The Witness: No, it should be 19.

A. (Continuing) 123 is similar to the initial exhibit No. [fol. 1323] 20, which shows the rate of return for the carriers involved in this proceeding, for the New York—the four New York carriers and the three Philadelphia carriers.

Exhibit No. 124 brings up to date the figures shown in Exhibit 66. Exhibit No. 125 brings up to date the figures shown in Exhibit No. 21. I have shown in the last right hand corner block the figures for January to July, 1949, inclusive. There were no figures for the corresponding period in 1948 shown on Exhibit No. 125, so I have shown those figures for comparative purposes in Exhibit 126. The figures in Exhibit 126 should be contrasted with the figures shown on the block in the lower right hand corner of the exhibit, January to July, 1949.

By Mr. Smith:

Q. Does that complete your explanation of Exhibits 113 to 126, inclusive?

A. It does.

Q. Were these exhibits prepared by you or under your direction and supervision?

A. They were.

Q. To the best of your knowledge and belief, do they correctly and accurately show what they purport to show?

A. Yes, sir.

Mr. Smith: I offer them in evidence.

Exam. Brown: Any objection?

(No response.)

[fol. 1324] Exam. Brown: Exhibits Nos. 113 to 126, inclusive, are received in evidence.

(Respondent's Exhibits Nos. 113 through 126, inclusive, Witness Hodkinson, received in evidence.)

Exam. Brown: Any further questions of Mr. Hodkinson?

Mr. Smith: No, sir.

Exam. Brown: Cross examine.

Mr. LaRoe: Mr. Examiner, so far as I am concerned, there will be no cross examination, and I would like to state why. The exhibits dealing with prices we claim to have no relevancy whatsoever to the proceeding, and as to railroad earnings, we claim that they should be taken care of in general investigations and not in cases of this character. That being our position, it will not be consistent for us to cross examine the witness, as I see it, and I shall have no questions.

Exam. Brown: Any cross examination from other protestants?

Mr. Hoffman: Mr. Examiner, I should like to ask Mr. Hodkinson a question which pertains to clarification of an answer he gave on the occasion of the last hearing. It does not deal directly with these exhibits, but deals with another matter. I take it I am privileged to do that, am I?

Mr. Smith: We have no objection.

Exam. Brown: You go ahead and ask the question and I will rule upon it.

[fol. 1325] Cross examination.

By Mr. Hoffman:

Q. Mr. Hodkinson, at page 13 of the transcript of the prior hearing you testified as follows: "In this connection, I wish to introduce Exhibit No. 1. This exhibit reproduces Rule 27 of the Consolidated Freight Classification and it provides, as I have just stated, for the unloading by the consignee of all carload freight, and that is the rule generally

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with but very few exceptions. At various points where the carriers hold themselves out to perform either a loading or an unloading service, the carriers are published"—which I take it you meant "tariffs" but it says "carriers"—"are published, which carries a charge for the service. Specific charges are published at Baltimore, Pittsburgh and Chicago for the unloading of fresh fruits and vegetables."

Mr. Hodkinson, do you recollect so testifying?

A. Yes.

Q. Now, referring to Baltimore, Pittsburgh and Chicago, where you stated specific charges are published for the unloading of fresh fruits and vegetables, is the shipper or consignee at those places permitted to unload carload freight?

A. Most of the unloads at those points are performed by the consignees.

A. Well, I am not asking you at this moment the practice. I am asking you now whether shippers or consignees are permitted by the carriers to unload carload freight under the rule?

[fol. 1326] A. Yes, they are permitted to unload and, as a matter of fact, they do unload.

Q. Is it your statement, then, that this would apply also to carload fresh fruits and vegetables arriving at carload rates at the terminal auctions at the cities referred to by you, to wit, Baltimore, Pittsburgh and Chicago?

A. My understanding is that all cars of fruits and vegetables arriving at those markets, for whatever delivery, are unloaded by the consignee except when the consignee requests the railroad to unload, in which event we charge for that service.

Q. And the consignee or shipper is permitted to unload under the rule, if he so desires?

A. Oh, yes.

Mr. Hoffman: That is all.

By Mr. Van Arnum:

Q. Mr. Hodkinson, I want to ask you one question about Exhibits 119 and 120. The retail prices. The commodities

shown there are commodities arriving in New York by all classes of carriers, are they; that is, truck, railroad, teamtrack unloads and terminal unloads? Is that true?

A. Oh, yes. They apply to all the receipts at these retail markets.

Mr. Van Arnum: I agree, then, with Mr. LaRoe's observation. There is no point in any further questioning on these exhibits.

Exam. Brown: Any other cross examination?

[fol. 1327] Mr. Goldsmith: Mr. Brown, I would like to take the same stand as Mr. LaRoe, but I have just one or two questions of clarification of Exhibits 123 and 124. I should like to know whether the rate of return as figured out by Mr. Hodkinson for the Baltimore & Ohio Railroad includes the Staten Island Rapid Transit Railway.

The Witness: I am not sure.

Mr. Smith: Is your recollection at all refreshed, Mr. Hodkinson, by Exhibit 125?

The Witness: 125 and 126—the figures shown in that exhibit, the Staten Island figures, are incorporated in the Baltimore and Ohio. As to rate of return, I think it is logical to assume that the figures do include the Staten Island Rapid Transit's operation.

Mr. Goldsmith: Then, if the Staten Island Rapid Transit operation were included or were excluded, rather, from the Baltimore & Ohio rates, the rate of return would be different; is that true?

The Witness: I do not think it would, because taking the Staten Island's total operating revenues into consideration in the revenues, with relation to the large B&O system, it would be too small to have any appreciable influence on the rate of return. I do not think it would disturb the figure at all.

Mr. Goldsmith: Do you know what the net loss to the [fol. 1328] Staten Island Railway was during this period of time?

The Witness: No, I do not. I think 1949 it was somewhere in the neighborhood of $600,000.

Mr. Goldsmith: That is all I have.

Exam. Brown: Any further cross examination?

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(No response.)

Exam. Brown: Concerning the statements made by Mr. LaRoe and the concurrence therein of other counsel, I wish to call attention to the fact that similar data were included in exhibits at the prior hearing and to which no objection was made. I take it now that there is an indication, at least, on the part of the protestants that they have changed their position in that respect.

Mr. LaRoe: Well, I can only say as to that that it was not my privilege to be at the former hearing and that the only reason why I did not object to these prices and so on is that the similar evidence was received before and I assumed that your Honor would be consistent with the record previously made. You received the material over objection, and I could not criticize you too much, if you did, because it is already in the record.

But my position is very strong that this evidence has no bearing on the unloading charges, and that explains the reason why I did not cross examine.

Exam. Brown: You may argue that point in your brief if [fol. 1329] you consider it appropriate.

Mr. Goldsmith: Mr. Examiner, if I might, I will explain the City of New York's position, which is actually the same as Mr. LaRoe's, with the exception we were not a party at the prior hearing, therefore, we had no opportunity either to object or consent to anything going into the record. But, we certainly do expect to urge before the Commission that this was improper even at the earlier hearing.

Mr. Loos: Mr. Examiner, your Honor made reference to a question of whether or not counsel who appeared at the prior proceeding had changed their position. I have felt from the beginning of this case that this kind of evidence was without any value and had no bearing upon the real issues, in this case. I except from that one of the exhibits, Exhibit 114, which refers to the carload deliveries. We did not object to that evidence in the earlier proceeding because it was introduced at the very opening of the hearing, and at that time we did not have too clear an idea what the issues were and how the carriers were proceeding.

As I look back on it, I think I would not object to it

even in my own present position, and I do not object to the receipt of the evidence now.

However, I do think it has no bearing at all and is of no value at all in determining the real issues in this case.

Exam. Brown: You are talking about Exhibit 114?

[fol. 1330] Mr. Loos: No, I am talking about all of the exhibits except 114.

Exam. Brown: Except 114?

Mr. Loos: Yes, sir.

Mr. Wells: Mr. Examiner, I do not recall that there has been any change in the position taken by the parties represented by me since the inception of the proceeding. I do not see where a retail price or retail prices have any bearing whatever on the question involved here. There are so many other factors involved, it is just useless to try to develop those on cross examination.

But I do not think there has been any change in our position.

Exam. Brown: You made no statement with respect to the retail prices having no bearing in your brief, Mr. Wells, nor did you at the prior hearing. I am not ruling at all that these matters are pertinent. I am not ruling in any respect concerning that. The exhibits have been received and they will stand received. They will be considered, however, in connection with the remarks made by all counsel appearing.

Mr. Fitzgerald: Mr. Examiner, if I may make my position clear in a brief statement: my client was represented at the prior hearing but not by me, and for that reason I did not previously enter my objection. I would, however, like at this time to have my objection to the admission of [fol. 1331] Exhibits 113 and 115 to 126, inclusive, noted on the record on the ground that they are irrelevant and immaterial in this proceeding.

Exam. Brown: Aren't your objections coming rather late? I asked if there were any objections and there was no statement made as to that, and I received them. Mr. LaRoe's statement was not in the nature of an objection, but merely a statement after they were received that he did not consider them pertinent, therefore, he had not objected.

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Mr. Fitzgerald: Well, sir, I offer that motion and ask that it be noted on the record, if you will permit.

Exam. Brown: Your remarks are noted on the record. Let us get ahead now.

Any other cross examination?

(No response.)

Exam. Brown: Redirect?

Mr. Smith: No.

Exam. Brown: Mr. Miller?

Mr. Miller: I have one question, Mr. Examiner, if you please.

Redirect examination.

By Mr. Miller:

Q. In these cases at other points in official territory, Mr. Hodkinson, where the carriers unload or load carload freight, is it correct that that service is provided only at station houses of the carriers?

[fol. 1332] A. That is correct, yes.

Q. And at such station houses it is only the carriers who may perform the loading or unloading, is it not?

A. At station houses, the carriers can only unload it, but I do not think that you and I are in accord. Let me more clearly understand the question.

Q. You are perfectly correct.

Exam. Brown: It is not clear to me, so you may go ahead.

The Witness: It is not clear to me either.

Exam. Brown: Go ahead, Mr. Witness, and explain it.

The Witness: Well, I want to understand his question a little clearer.

Exam. Brown: All right.

By Mr. Miller:

Q. My question was whether or not these station houses at which the carriers performed the loading or unloading, the consignees are permitted to perform that operation?

A. At station houses the consignees would not be permitted. We cannot have them on our property, no.

Mr. Augello: Mr. Examiner, just to clear that point.

Recross examination.

By Mr. Augello:

Q. Does Rule 27 just cover the loading and unloading by the railroads at station houses or does it provide for the railroad loading or unloading at team track?

A. According to Rule 27, it provides, in connection with [fol. 1333] carload shipments, that it is the consignor's obligation to load and the consignee's obligation to unload.

Q. Carload shipments—period.

A. Carload shipments, yes.

Q. Period, is that right?

A. That is correct.

By Mr. Hoffman:

Q. Mr. Hodkinson, I am not familiar with the term "station houses." Would you define that for me, please?

A. Well, I understood Mr. Miller to refer to freight stations, where the freight is loaded from the freight platforms to cars.

Q. Loaded?

A. Or unloaded from cars to freight platforms.

By Mr. LaRoe:

Q. Well, does it follow from your answer that where there are similar platform situations at Baltimore, Pittsburgh and Chicago, that the consignees are denied by the tariffs the right to unload, and, if so, where does that appear in the tariff?

Mr. Miller: Objection, Mr. Examiner.

Exam. Brown: Overruled.

A. The situation, I think, will come particularly into play with forwarded traffic.

By Mr. LaRoe:

Q. Forwarded traffic?

A. Yes.

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Q. We are not dealing with forwarded traffic here.

A. You are dealing with the broad general questions, as I [1334] understand it, wherever we had a charge and it provided in the tariff for the loading of carload, for the unloading of carload freight.

Q. Well, let us stick to our knitting and deal only with fruits and vegetables unloaded at platforms at Baltimore, Pittsburgh and Chicago. Is it or is it not a fact that under the tariffs the consignees are permitted to unload?

A. That is the fact; they are permitted to unload at Baltimore, Philadelphia and Chicago.

Q. And at the railroads' platforms, isn't that right?

A. Well, I do not think it would be your railroad platforms. I am not sure as to the exact physical layout.

Q. Well, then, how can you answer regarding station houses? Is this a station house or isn't it?

A. Well, you are dealing with a specific situation in one case and a general situation as touched upon by Mr. Miller.

Q. Then the answer to the question is you do not know whether at Baltimore, Pittsburgh and Chicago these delivery facilities would fall under the designation "station houses" or not?

A. I do know that the Baltimore, Philadelphia and Chicago—by far, the preponderance of the fruits and vegetables arriving there are unloaded by the consignees, but it is only in specific instances where they request the carriers to perform the unloading that we come into the picture, in which event we have a charge published in the tariff for [fol. 1335] the service we perform.

Q. And don't you know, also, that they are unloaded at railroad facilities?

A. Well, I assume they are unloaded at railroad facilities.

Mr. LaRoe: All right, that is all.

By Exam. Brown:

Q. Are you drawing any distinction in your testimony with respect to team tracks and station houses, station platforms?

A. Well, team-track fruits and vegetables, I suppose, would be covered by the unloading tariff of fruits and

vegetables, just as any other facility would be covered.

Q. I do not know. I am asking you. You say you suppose, and that isn't very good evidence.

A. Well, I haven't testified at any time as to any familiarity with the physiscal layout at any one of these stations. I do know that as a practical proposition that we could not allow people to come into our freight house and interfere with our own employees when it comes to the loading or unloading of carload freight. Mr. Miller's question, as I understood it, dealt with the railroad stations.

Q. You do not know definitely, then, when shippers unload, whether they unload at station houses?

A. I would say definitely that when consignees unload, they do not unload at station houses.

Q. Well, do you know?

[fol. 1336] A. Well, yes. I do not know of any instance where the consignee would unload at the station house, and I have been around station houses all of my life practically.

Q. A moment ago you said that the carriers would not allow the shippers to come into the station house to unload. At least, that was the thought I gained from the statement.

A. That is the answer I just gave you, that I cannot conceive of any situation under which a consignee unloads in the station house.

Q. In other words, he would unload at a team track, according to your testimony?

A. He would unload at team track or his own private siding.

Q. He would be permitted to do that in any event?

A. Exactly.

Q. Where does this charge come in, then?

A. The charge comes in when we supply labor at the team track. If the consignee does not want to supply labor at the team track, it would apply at the team track.

Q. In other words, it is your testimony that the carrier could supply labor and unload the car on a team track and make the tariff charge for it?

A. Yes, it is provided. We have two charges in our general exceptions tariff, with two types of service. One is a partial service and one is a complete service. That was all gone into in the I&S case that we had recently where we

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[fol. 1337] were seeking to get these loading and unloading charges increased, and they came into play particularly in connection with forwarded coverage. You do not have the forwarding companies unload freight on the station platforms. We make a charge for that.

Exam. Brown: What I&S case are you talking about? As long as you refer to it, give us the citation.

Mr. Miller: Charges for loading and unloading carload freight. I understood you to say 5466.

The Witness: Yes, 5466 I think it is.

Exam. Brown: That is enough.

By Mr. Augello:

Q. Mr. Hodkinson, have you ever been in the Baltimore produce terminal?

A. I cannot recall that I have, no.

Q. How about the Pittsburgh produce terminal on the Pennsylvania Railroad?

A. I have been there, yes, but I have only got a very hazy recollection of the physical layout there.

Q. Do you recall seeing that the Pittsburgh produce terminal is a terminal that has a house and a platform extending about a thousand or fifteen hundred feet?

A. My hazy recollection is that the cars are switched into this terminal and that you can unload from the terminal to some platform, but they are set wholly apart for this fruit and vegetable traffic. That is my recollection. I am [fol. 1338] not giving it to you as the exact physical outlay.

Q. It is a covered freight house, isn't it?

Mr. Smith: Mr. Examiner, may I make an observation, that Mr. Hodkinson said while he has been in Pittsburgh, his memory is somewhat hazy. Later on in this case there will be on the stand a witness from the Pennsylvania Railroad who really knows what the physical situation is in Pittsburgh. I might suggest that such questions be reserved for him rather than directed to Mr. Hodkinson, whose recollection is hazy.

Mr. Augello: All right.

By Mr. Fitzgerald:

Q. Mr. Hodkinson, you are aware, are you not, that the Pennsylvania Railroad has a facility in Baltimore called the Pennsylvania Produce Terminal?

A. It is the produce terminal of Pennsylvania in Philadelphia, but whether it is Philadelphia, Pennsylvania, and B&O or wholly Pennsylvania, I do not know.

Mr. Fitzgerald: I do not believe the witness understood my question. Can it be reread to him?

Exam. Brown: I think it would be better for you to restate the question. It takes time to go back and read this over.

By Mr. Fitzgerald:

Q. You are aware, are you not, Mr. Hodkinson, that the Pennsylvania Railroad has a facility in Baltimore called the Pennsylvania Produce Terminal?

A. No, I am not. I know that there is a produce terminal at Baltimore, but I do not know whether it is jointly oper-[fol. 1339] ated for the benefit of the B&O and the Pennsylvania or whether it is purely Pennsylvania. I do not know anything about it.

Q. It is a fact, though, isn't it——

Mr. Donadio: Just a moment, Mr. Examiner; I should like to interpose an objection to asking questions about the physical situation of the Pennsylvania Railroad, Baltimore, or any other place, of this witness, in view of Mr. Smith's statement that there will be a witness of the Pennsylvania Railroad who will be well-informed and can give him all the answers he wants along that line.

Mr. Fitzgerald: May I say, Mr. Examiner, that this line was opened up by Mr. Miller's question which the witness purported to give very precise answers to.

Mr. Donadio: It was opened up to a very limited extent, I think, and not to the broad extent to which counsel are indulging.

Mr. Miller: Well, now, Mr. Fitzgerald, it is perfectly obvious that this witness is not well-informed and it would seem to me just in the light of keeping a clear record, that

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you should hold your question until you have a witness before you who does know. Isn't that a reasonable proposition?

Mr. LaRoe: We are willing to do that, but we submit that you should not have asked him if he is ill-informed.

Mr. Miller: I asked him as to the general proposition throughout official territory. He is informed as to that.

[fol. 1340] Exam. Brown: I would make the statement at this time that the cross examination is proper, but probably futile.

Mr. LaRoe: We agree with you.

Mr. Hoffman: I should like to ask——

Exam. Brown: And when I say futile, I am referring to the lack of knowledge on the witness's part with respect to the physical layout of these particular stations. I think it would be well for you to reserve your questions along this line. Mr. Hodkinson will be available throughout the hearing and if you are not satisfied with the answers you get from the other witness, we will recall Mr. Hodkinson. You will be here, will you not, sir?

The Witness: I will be here.

Mr. Fitzgerald: In view of the Examiner's remarks, I will hold further questions at this time.

Mr. Hoffman: I should like to ask Mr. Hodkinson a question on a subject which I think he is familiar with, and that is not the operating practice, but the actual rule in the tariff itself.

Mr. Donadio: Is this cross examination of this witness on the testimony that he has given at this hearing? If not, I am going to object ot it, unless you want to call him as your own witness. You opened up the other situation, and look what it got us into.

Mr. Augello: You opened up the other situation.

[fol. 1341] Mr. Donadio: No, you opened it up by cross examining on matters which are not testified to on direct by this witness.

Exam. Brown: You ask your question.

Mr. Donadio: I made an objection.

Exam. Brown: I do not know how to rule because I have not heard the question. I must hear the question before I can rule. Go ahead and ask the question.

Mr. Donadio: You have got a pretty good idea. He told you what he is going to ask him.

Exam. Brown: I cannot imagine what he is going to say. It is beyond my scope. You go ahead and ask your question.

By Mr. Hoffman:

Q. Mr. Hodkinson, with respect to carload fresh fruit and vegetables moving into auction terminals at carload rates at Baltimore, Pittsburgh and Chicago, is the shipper or consignee under the rule or tariff permitted to unload the cars?

A. Yes.

Mr. Donadio: Just a moment. I object to the question insofar as cross examination of this witness is concerned. It deals with nothing that was testified to on direct.

Exam. Brown: I am constrained to overrule the objection because Mr. Miller raised those points in his questions. I cannot exclude any evidence in the way of questions or, rather, I cannot exclude questions along the lines which Mr. Miller asked, so you may answer.

[fol. 1342] Mr. Donadio: Well, now, the questions that opened up the proposition were improper cross examination, and just because they were improper and not objected to, that does not make these subsequent questions proper.

Mr. Goldsmith: Mr. Examiner, if I might be heard on this question, as I understand it, a lot of the testimony that has gone in this hearing at the present time is going in because it was previously admitted in one form or another at the previous hearings. As I understood, an earlier question of Mr. Hoffman's was with relation to some tariff schedule or rule that Mr. Hodkinson had submitted or offered in evidence at the previous hearing, and if he has offered in evidence at the previous hearing that matter, I submit that the question is perfectly proper on any rule or tariff.

Exam. Brown: Just a minute.

Mr. Donadio: You know that that is not good law.

Exam. Brown: I wish it understood that I made my ruling on this. I am permitting you to make your statements, but I do not expect them to be extended. Now, for

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the purpose of the record, I am going back to this situation to show you that my ruling is correct.

Mr. Hoffman asked if he might ask the question along the lines of testimony introduced by Mr. Hodkinson, or given by Mr. Hodkinson at the prior hearing. Mr. Smith made the statement, we have no objection, Mr. Examiner.

[fol. 1343] Mr. Smith: That is correct.

Exam. Brown: Therefore, that evidence went in. Mr. Miller, on redirect examination, asked questions along the lines of the questions that Mr. Hoffman is asking now. I have ruled that Mr. Hoffman may ask the question, and I rule that the witness may answer. I do not expect any more controversy about this particular evidence.

Now, Mr. Hodkinson, will you answer?

The Witness: Well, the question is on the record and the answer is on the record.

By Mr. Hoffman:

Q. And what is the answer?

A. The answer is yes. There is nothing under the tariff that prohibits the consignees from unloading at Chicago or Pittsburgh or Baltimore.

Mr. Matson: Mr. Examiner, I move that the question asked by Mr. Miller with respect to station houses and the answer by the witness be stricken from the record inasmuch as the witness is incapable of making a proper answer on that subject.

Exam. Brown: The question and answer will stand in the record and be considered in connection with your statement that you just made.

Mr. Matson: Thank you.

Mr. Miller: Mr. Examiner, I was out of the room at the time Mr. Hodkinson finished his testimony, and therefore I [fol. 1344] missed making the request at that time. I would like Mr. Hodkinson to furnish, within such time as the Examiner decides, the breakdown monthly figures which are totalled on Exhibit No. 114.

Exam. Brown: Now, what form will that breakdown take?

Mr. Miller: It will give a figure for each month for each of the items on the exhibit.

Mr. Wells: Well, Mr. Examiner, if the additional breakdown is to be furnished, will it be possible in the time that he is breaking it down to give us some additional information regarding that as between the piers, Jersey——

Mr. Augello: And commodities.

Mr. Wells: As was done at the former hearing?

Mr. Miller: I do not think we have figures available. I am sure we do not have figures as to commodities. We do have figures as between team tracks, Manhattan, and team tracks, Jersey City, piers and the private siding figures—we could produce those.

Mr. Wells: While he is breaking it down, I request it be broken down in addition to those.

Mr. Augello: Mr. Miller, may I ask that the figures be broken down as to fruits and vegetables?

The Witness: Vegetables, we cannot do it.

Mr. Augello: Fruits, citrus and deciduous in one column, and vegetables in the other, regardless of the commodities [fol. 1345] of vegetables?

The Witness: We cannot do it.

Mr. Miller: Mr. Augello, we do not have those figures, and to get them would involve an enormous quantity of work. We would have to go through all the bills to get them.

Mr. Augello: I am informed that the Pennsylvania Railroad has those figures.

Mr. Miller: I did not ask Mr. Hodkinson to bring us any figures for the Pennsylvania. I asked him to break down the total figures. I do not want him to furnish any individual figures for any individual line.

Mr. Augello: Well, I think that the Commission would be interested to know just how many cars of vegetables, as distinguished from the total number of cars of fruit, are unloaded by the four railroads at the New York piers. They are not interested in what was unloaded at the Bronx terminal freight house that you have included in your Exhibit No. 114.

Mr. Miller: Mr. Examiner, in reply to Mr. Augello's statement, I can say that I would like very definitely to have those figures, and if I could get them at a reasonable

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expenditure of money, I would have them but I cannot.

Exam. Brown: Well, as I understand it, you wish Exhibit 114 supplemented so that each of the items in there be broken down as to month?

Mr. Miller: That is right.

[fol. 1346] Exam. Brown: Now, how about the request Mr. Wells made? Can you comply with that?

Mr. Miller: I can comply with that.

Exam. Brown: What exactly is that?

Mr. Miller: That is to break down the——

The Witness: Team-track delivery as between Jersey City and New York.

Mr. Miller: (Continuing) Team-track deliveries and private siding deliveries as between team tracks Jersey City, team tracks Manhattan, and private sidings.

Exam. Brown: Can you do that, Mr. Hodkinson?

The Witness: Yes.

Exam. Brown: You will be allowed 10 days in which to do this; that is, 10 days after the close of the hearing.

The Witness: All right.

Exam. Brown: Any further questions of this witness?

(No response.)

Exam. Brown: You are excused, Mr. Hodkinson.

(Witness excused.)

Mr. Smith: I call Mr. Root.

Exam. Brown: Mr. Root was a witness at the previous hearing, and you may proceed with the direct examination of Mr. Root. Go ahead, Mr. Smith.

Mr. Smith: Mr. Root's testimony is being distributed.

[fol. 1347] E. S. Root, having been previously sworn, testified as follows:

Direct examination.

By Mr. Smith:

Q. Kindly state your full name and business address.

A. Eugene S. Root, Midland Building, Cleveland, Ohio.

Q. Were you a witness in the previous hearing in this docket held at New York City, July 29, 1947?

A. I was.

Q. What is your occupation?

A. Chief of Research, Erie Railroad Company.

Q. Is that the same as it was when you gave your previous testimony?

A. Yes, sir.

Q. And at that time you introduced Exhibit No. 23 consisting of three sheets, summarizing a study made by you of the cost of unloading fruits and vegetables at the Erie's Duane Street piers. Have there been any changes since that study in the operation or in the costs thereof which would substantially affect the results shown on that Exhibit No. 23?

A. I made an investigation and found that there has not been any substantial change in the operation as described by Mr. Hart, our Agent at Duane Street, in his testimony at the hearing in July, 1947. However, there have been certain changes in compensation paid employees of the [fol. 1348] Seaboard Terminal and Refrigeration Company which affect the costs as shown by Exhibit No. 23. On September 1, 1947, the wages of employees of the Seaboard Terminal and Refrigeration Company involved in the unloading operation were increased 15-½ cents per hour.

On November 29, 1948, their wages were again increased 10 cents per hour, making a total increase of 25-½ cents per hour above the wage levels in effect at the time of our original study. In addition, there was a change in vacation allowance. At the time of our original study, employees with one year's service who had worked for 165 days within the year preceding April 15th were allowed one week's vacation with pay. At the present time employees with five years or more service are allowed an additional week's vacation with pay.

Q. Have you prepared an exhibit consisting of three sheets to show the effect of changes in compensation paid on the costs per ton for unloading fruits and vegetables as shown in your Exhibit No. 23?

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A. I have prepared an exhibit consisting of three pages to show current costs of unloading headed "Erie Railroad Company—Cost of Unloading Fruits and Vegetables, Duane St., Piers, New York City."

Mr. Smith: Mr. Examiner, may such exhibit be marked No. 127 for identification?

Exam. Brown: Yes.

[fol. 1349] (Respondent's Exhibit No. 127, Witness Root, marked for identification.)

Q. Will you please describe Exhibit No. 127?

A. Sheet 1 of Exhibit No. 127 is the same as Sheet 1 of my original Exhibit No. 23 in these proceedings and shows separately for citrus fruit, fresh fruits (other than citrus), fresh or green vegetables—top-iced, fresh or green vegetables—not top-iced, and cantaloupes and melons, the number of cars unloaded, and unloading gang minutes required for the test period covered by my original study. On Sheet 2 of Exhibit No. 127 I have shown in column 2 the contractor's cost for the test period as shown on Sheet 2 of my original Exhibit No. 23. Column 3 shows the per cent increase of current wage rates over the rates in effect during the test weeks, and in Column 4, the test weeks' costs have been restated to current levels. The revised percentage used for computing insurance and taxes on line 11 is based on the year 1948.

Revised cost per unloading gang minute of 26.80 cents compared with 21.55 cents during the test weeks is shown in line 15. In restating these costs, I have not given effect to the increased vacation allowance as the complete costs are not yet available for a representative year to make an accurate computation. The restated cost per unloading gang minute is, therefore, understated to this extent.

On Sheet 3 of my Exhibit No. 127 there is shown in [fol. 1350] Column 2 the gang minutes per ton for the various commodity groups as shown on Sheet 1 of this exhibit. I have applied to the gang minutes per ton the cost of 26.8 cents per minute as computed on Sheet 2 of this Exhibit to determine the total unloading cost per ton in

Column 3. As stated in my testimony at the first hearing, the unloading gang minutes per ton include the time of assorting fruits and vegetables. Under present tariff provisions, including the final increase in Ex Parte 168, the consignee is charged $4.48 per car on cantaloupes and melons, and $4.63 per car for all other fruits and vegetables for assorting. This tariff carload rate has been divided by the average number of tons per car in the test weeks for each commodity group and the averages per ton shown in Column 4. These amounts have been deducted from the total unloading cost per ton shown in Column 3 to determine a net cost per ton for each commodity group in Column 5.

Q. Mr. Root, at the first hearing you testified that not all fruits and vegetables were asserted; however, that the method of computation that you used in your Exhibit No. 23 assumed that each car was assorted, and as a result the net costs per ton were understated. Are these statements true with respect to your present Exhibit No. 127?

A. They are true. I would like to emphasize that most cars of vegetables are not assorted, and for this reason the total cost per ton shown in Column 3 for fresh or green [fol. 1351] vegetables—top-iced, and for fresh or green vegetables—not top-iced, more nearly represents the actual cost of unloading than the net cost shown in Column 5.

Q. What are the net costs per ton for unloading in each of the selected commodity groups as shown in Exhibit No. 127?

A. The average net cost per ton for citrus fruits is $1.4917; for other fresh fruits, $2.1092; for fresh or green vegetables—top-iced, $2.5055; for fresh or green vegetables—not top-iced, $1.4645; for cantaloupes and melons, $2.2165.

Q. In your testimony with respect to your original Exhibit No. 23, you mentioned certain items of expense that you had not included in the unloading cost. Have any of these omitted items of expense been included in your present exhibit?

A. They have not.

Q. Earlier in your testimony you stated that you made

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an investigation and found there had not been any substantial change in the operation as was described by Mr. Hart at the previous hearing in this docket. Did your investigation disclose any changes which, in your opinion, might affect the costs as shown by your present Exhibit No. 127?

A. My investigation developed that there has been a change in the method of display of part of the citrus fruit handled for the account of the California Fruit Growers Exchange. This change in method of display applied only to space on the north side of Pier 21 (except for isolated [fol. 1352] instances), which has a capacity of 50 to 55 carloads. The purpose of this change was to increase the efficiency of the operation. It was estimated we saved approximately 15 gang minutes per car displayed by the new method. There also has been a change in the average load per car, particularly for oranges. At the time of our previous study the normal load was 561 boxes, or 47,685 pounds per car. With the cancellation of O. D. T. orders 462 boxes are now loaded per car, or 39,270 pounds. This means that to handle an equivalent amount of tonnage it is necessary to handle 21.4 percent more cars, tending to decrease the efficiency of the unloading operation.

The exact effect of these two changes could not be determined except by a detailed study covering representative periods throughout the year. Furthermore, it is uncertain whether the new method of display will be continued indefinitely because it always has been our policy to adapt the display system to the wishes of the trade so far as reasonably possible. Accordingly, we did not feel justified in undertaking an extensive study to determine exactly the effect of these two relatively minor changes currently in effect. However, my best estimate is that the combined effect of these two minor changes would not reduce the costs of citrus as a whole by more than ten cents per ton.

Q. Mr. Root, have you any information as to the number of carloads of fruits and vegetables unloaded on piers 19, [fol. 1353] 20 and 21 during the year 1949?

A. I have such information for the first eight months of 1949 and for comparative purposes have similar informa-

tion for the first eight months of 1948. The unloads for these periods were as follows:

	First Eight Months	
	1948	*1949*
Citrus fruit	5,342	5,131
Fresh fruits (other than citrus)	6,476	6,731
Fresh or green vegetables (top-iced)	1,742	148
Fresh or green vegetables (not top-iced)	581	92
Cantaloupes or Melons	1,878	2,024
	16,019	14,126

Q. I call your attention to the small number of cars of fresh vegetables—not top-iced, and fresh vegetables—top-iced, in the first eight months of 1949 as compared with 1948, and ask if you know the reason for the substantial reduction.

A. I have investigated the cause for this reduction in cars and find that such traffic was diverted to team track delivery and is now being handled on Manhattan team-tracks of the New York Central and Baltimore and Ohio Railroads. Earlier in the year this traffic also was affected by the heavy freeze in the west and southwest.

Q. Mr. Root, since your testimony was prepared and since [fol. 1354] your exhibit No. 127 was prepared, have you learned of an additional wage increase which you did not know about at the time you prepared Exhibit No. 127?

A. The union representing the labor of the Seaboard Terminal and Refrigeration Company has recently asked for an increase in wages due to the 40-hour week which affected railroad employees, but did not affect their organization—they were already on a 40-hour week. But, due to the increase in the hourly rate for railroad employees, they have asked for additional compensation. The Seaboard Terminal and Refrigeration Company have offered them—and it is my understanding that they have accepted —20 cents per hour increase, but this has not been finally agreed to as there are other considerations involved. But the minimum will be 20 cents per hour increase.

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Q. And do you know to what date that 20 cent increase will be made retroactive?

A. That is to be retroactive to September 1, 1949.

Exam. Brown: Is there an agreement to that effect?

The Witness: No agreement has been signed.

Exam. Brown: You mean they have asked for the retroactive effect of it?

The Witness: To September 1, 1949, yes, sir.

By Mr. Smith:

Q. Well, what was the offer that Seaboard made, Mr. Root? Will you state that?

[fol. 1355] A. The Seaboard offered the union an increase of 20 cents per hour effective September 1, 1949.

Q. This 20 cent increase is in no way reflected in your Exhibit No. 127?

A. It is not.

Q. What would the effect be upon the unloading cost of the 20 cent increase?

A. It would increase the cost in column 3 of my Exhibit No. 127, shown on sheet 3, by approximately 16 percent.

Q. Was Exhibit No. 127 prepared by you?

A. It was.

Q. To the best of your knowledge, does exhibit No. 127 correctly and accurately show what it purports to show?

A. It does.

Mr. Smith: I offer the exhibit in evidence.

Exam. Brown: Any objection?

Mr. LaRoe: I should like to have the record show, Mr. Examiner, that we make the same objection to this sort of testimony that we did to the other on the ground that all of this is cost and must, as a matter of law, be included in the line-haul rates. For that reason I shall have no cross examination on the cost figures. I realize that this evidence was admitted over objection before, but I must adhere to my objection since this is a rehearing.

Mr. Fitzgerald: May my objection be noted on the record [fol. 1356] for the same grounds.

Exam. Brown: Any other objections?

Mr. Goldsmith: My objection is on the same grounds.

Exam. Brown: Do I understand that Mr. LaRoe's statement was not an objection?

Mr. LaRoe: Yes, my statement is an objection.

Exam. Brown: It is an objection to this evidence?

Mr. LaRoe: Yes.

Exam. Brown: All right.

Mr. Wells: I should like to also object on the additional ground that it is not in rebuttal of any evidence presented at this hearing by the protestants, bearing in mind that at the beginning of the hearing that matter was called to the attention of the counsel for respondents as a matter of order of proof and what evidence would be admissible in the course of this proceeding.

Mr. LaRoe: Before you rule on the objection, may I ask the witness a question for clarification?

Is there any cost included in your study that goes beyond what we have talked about here as simple delivery from the car on the carfloat to the floor of the pier? You have been as careful as you can be, have you, to weed out anything except that simple delivery cost?

Mr. Smith: Well, I do not want to have the witness misled by the words. At the previous hearing he described [fol. 1357] exactly and in detail what costs he put in and what costs he kept out. I do not think he can add anything to that. The rest is argument, isn't it, Mr. LaRoe?

Mr. LaRoe: Well, can you state for my organization—I do not ask you to do it, of course, if you cannot—whether you have included anything in here except the cost of transferring the freight from the car to the floor of the pier.

The Witness: Well, I have described completely in my previous testimony exactly what I included. Now, technically, the operation of unloading from the car to the pier is performed by the Seaboard Terminal and Refrigeration Company. These costs include all costs in connection with that, which, as I have previously testified to, for example, include some proportion of sweeping, cleaning it; it includes some proportion of office expenses; but all expenses in connection and allocated against the unloading gangs' time per minute of unloading fruits and vegetables on to the pier.

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Mr. LaRoe: Well, you haven't apportioned anything to the cost of this service which was not in your judgment properly to be allocated against that simple transfer from the freight car on the float to the floor of the pier; isn't that right?

The Witness: Of the unloading of the car.

Mr. LaRoe: Well, now, Mr. Examiner, just to make my position clear—and I shall argue this in my brief and I will not argue it here—but to make my position clear, that [fol. 1358] simple unloading service has been for half a century included in the rates and it makes no difference from the standpoint of this hearing, as we see here, whether that cost is one cent or one dollar or ten dollars, and therefore I shall not cross examine on the accuracy of the cost study.

Mr. Matson: Mr. Root, did I understand you to say in answer to Mr. LaRoe's question that your exhibit does not include the cost of sorting and stacking, which is another service? Did you put that in, and then attempt to take it out?

The Witness: That is right. Oh, yes, I think the record shows that very clearly.

Mr. Matson: At the original hearing, you referred to a controversy which you were in with the Railroad Retirement Board, as to whether these employees are subject to the Railroad Retirement Act. Can you bring us down to date on that fact, whether they have been decided to be covered by that or not?

The Witness: My understanding is that it has been decided that the particular employees involved in this unloading operation are not subject to the Railroad Retirement Act.

Mr. Matson: They are not subject to the Railroad Retirement Act?

The Witness: They are not subject to it.

Mr. Matson: At the time of the original hearing, a suggestion was made that if they were subject to the Railroad [fol. 1359] Retirement Act, the costs would be higher than if they were not.

The Witness: That is right.

Exam. Brown: As I understand Mr. LaRoe's position,

it is the charges for unloading will not be separate, but should be or are included in the line-haul rate. Is that right, Mr. LaRoe?

Mr. LaRoe: Well, I do not want to be technical. I suppose the railroads would have the legal right through the years to show a segretation of terminal charges from line-haul charges, but they have not done it. They have published a line-haul rate which for half a century included this delivery. Now, our position is that the delivery service must be made under a line-haul rate; that the railroad has not satisfied its common carrier obligation with respect to the delivery until the freight has been made reasonably accessible to the consignee.

The record shows overwhelmingly — we shall argue in our brief—that the freight is not found to be accessible to the consignee on the carfloat; in fact, that the consignee is denied access to the carfloat, and therefore, any service of getting that freight out of the car and on to the pier is a part of the common carrier obligation under the line-haul rate. It makes no difference to us whether that cost is 5 cents or 25 cents or 25 dollars. It is in the line-haul rate and has already been paid for. That explains why I shall not cross examine on the accuracy of this exhibit and why [fol. 1360] I object to the exhibit.

Exam. Brown: The only question for me to rule upon at the present time is whether or not this evidence is pertinent in this proceeding.

Mr. LaRoe: That is right.

Exam. Brown: If the same type of evidence were introduced in connection with the showing by the carriers and the possible admission on their part that the line-haul rate is involved here, then would the evidence as to terminal costs not be pertinent, Mr. LaRoe?

Mr. LaRoe: If the proceeding were one involving an attempt on the part of the carriers to show the reasonableness of the line-haul rates and what should be charged for that service and what would be reasonable for the terminal service, the whole terminal service, that would be an issue that we do not have here at all. To make my position still clearer, if they should come in here now and show what their terminal expenses are in Florida and ask that that

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be included, added to the line-haul rates, I feel sure that the Examiner would rule it out because it has always been included in the line-haul rates.

In other cases, they have claimed that those terminal operations in Florida are extensive, but they are in the line-haul rates.

Now, here in New York they are proposing to collect again [fol. 1361] for a service which for half a century has been in the line-haul rates. I do not think the Commission should have permitted it and I am hoping that this Examiner will overrule the majority of the Commission, even though that may seem to be quite a task, and we think that here the ruling should be that this evidence is improper, immaterial, and incompetent because the line-haul rates have always included this service.

Mr. Smith: Mr. Examiner, I do not want to make an argument, but on the question of the admissibility of the exhibit, the Commission's decision in this case referred to the cost studies which were put in at the prior hearing, and devoted quite a bit of discussion to it, as a matter of fact, and there seemed no doubt in my mind that the Commission would want to have the up-to-date information on the costs.

Exam. Brown: I am going to admit these exhibits or this exhibit, rather, and all other exhibits of this type to be offered, and I wish my ruling to be understood as applying to other similar evidence to be offered, so we won't have to go over the same ground. As I say, I am going to permit the receipt in evidence of this exhibit, and I want to call attention in that connection to the fact that a similar exhibit and similar exhibits were introduced at the prior hearing, and whether or not Mr. LaRoe is correct, I think for the information of the Commission that I would receive this in any event.

[fol. 1362] Now, with respect to the statement made by Mr. Wells as to the fact that this has not been followed, I am going to make a ruling now that will cover the rest of the respondents' evidence. Strictly speaking, it may not be rebuttal of everything that the protestants have offered. However, it might well be considered rebuttal of some of the evidence. You will recall that there were some rather general statements made by protestants' witnesses, that

these charges resulted in discrimination, prejudice, unreasonableness, and there were various other appellations in that connection.

Now, these exhibits could be taken to rebut those statements. However, aside from that fact, I think this is largely procedural. It really does not make any difference when we get these in, so long as no party is seriously prejudiced by this. In other words, I do not think any court would say it would be prejudicial error for me at this time to permit the respondents to go ahead as they evidently intend to.

I am going to receive this in evidence, and do receive in evidence Exhibit No. 127; that Exhibit and the testimony in connection with it will be considered in connection with the statements and objections made by counsel.

(Respondent's Exhibit No. 127, Witness Root, received in evidence.)

Exam. Brown: I wish it to be understood that similar rulings will be made in connection with other similar evi- [fol. 1363] dence which I understand is to be offered by respondents and to save argument, I will have it understood, also, that similar objections will be made by protestants to the same type of evidence, and the same ruling will apply.

Mr. LaRoe: And it will be understood, then, that it will not be necessary to object to each such item of evidence as introduced by respondents and that we get an automatic exception by reason of the objection we have already made?

Exam. Brown: That is right, Mr. LaRoe.

We will have a short recess.

(A short recess was taken.)

Exam Brown: Let the record show that the direct examination of Witness Root has been completed and by agreement of the parties, cross examination of Mr. Root will be deferred.

(Witness excused.)

WALLACE C. JARVIS having been previously sworn, testified as follows:

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By Mr. Brown:

Q. State your full name and address, please.
A. Wallace C. Jarvis, 466 Lexington Avenue, New York.
Q. By whom are you employed?
A. New York Central Railroad.
Q. And in what capacity?
A. Accountant.
Q. And how long have you been so employed?
A. 19 years.
[fol. 1364] Q. Mr. Jarvis, did you make a study in connection with the unloading of fruits and vegetables at pier 17 and at Bronx Terminal Market?
A. I did.
Q. And did you also reduce that study to exhibit form?
A. I did.
Q. And do you have that exhibit before you at the present time?
A. I have.

Mr. Brown: I offer that exhibit for identification.
Exam. Brown: Exhibit No. 128 is received in evidence, subject to the remarks I made with respect to objections to Exhibit 127, and they will apply equally to 128, and the ruling will be the same.
(Respondent's Exhibit No. 128, Witness Jarvis, received in evidence.)

By Mr. Brown:

Q. Now, Mr. Jarvis, will you tell us what that exhibit shows?
A. This exhibit shows the cars, tons, man hours and labor cost of handling perishable freight at pier 17 and Bronx Terminal Market, New York City; test week July 25 to July 30, 1949, inclusive. The first 19 lines of this exhibit show a breakdown of the unloading costs according to their class of employees, as indicated in the second column headed "Classification," and then subdivided as to the direct labor and supervision. Lines 20 to 25, inclusive, of [fol. 1365] this exhibit is a breakdown according to the type of commodity as shown in the second column headed "Commodity." This exhibit is broken down, as shown in the

third and fourth columns headed "Vegetables other than top-iced," and "Cantaloupes, melons and vegetables, top-iced," respectively.

Under each of these columns is shown the man hours and labor costs for the individual class of employee as shown in the second column; also the cars and tons of each item of commodity.

On Line 18 of this exhibit is shown the total direct labor and supervision. This item, when divided by the total tons shown on line 25, will give the total cost per ton as shown on line 19.

For vegetables other than top-iced, as shown on line 18, it costs $774 to unload 450 tons, or an average cash of $1.720 per ton.

For cantaloupes, melons and vegetables, top-iced, it cost $302 to unload 112 tons, and an average cost of $2.697 per ton.

Mr. LaRoe: For information, Mr. Jarvis, is there nothing handled at these terminals except the commodities shown in lines 20 to 24?

The Witness: Why, merchandise is handled on pier 17.

Mr. LaRoe: Are these commodities exclusively handled at the Bronx Terminal?

[fol. 1366] The Witness: Not all of them. Some are pier 17 and some are Bronx Terminal.

Mr. LaRoe: No, I mean does the Bronx Terminal handle anything except these commodities?

The Witness: No, sir.

Mr. LaRoe: So that the only breakdown as between these commodities in general freight that would be required would be at pier 17?

The Witness: That is right.

Mr. LaRoe: That is all. That is just for information.

By Mr. Brown:

Q. Now, Mr. Jarvis, how were these figures obtained?

A. From a time study during—well, a time study from the actual labor that was involved during the unloading.

Q. Was it actually made on the pier, pier 17 and Bronx Terminal Market, while the work was going on?

A. Yes.

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Q. And were those figures obtained by you personally and by men under your supervision?

A. Yes.

Mr. Brown: I offer that exhibit in evidence.

Exam. Brown: It has been received.

Mr. Brown: I thought it was marked for identification.

Exam. Brown: I stated that it had been received.

By Mr. Brown:

Q. Mr. Jarvis, at the time that this study was being [fol. 1367] conducted, did you observe the method of unloading at Bronx Terminal Market and Pier 17?

A. I did.

Q. And did you appear as a witness in the original hearing in this case?

A. I did.

Q. And at that time you introduced a similar exhibit?

A. Yes, sir.

Q. And at the time that this study was made for the original hearing, did you also observe the method of unloading at Pier 17 and Bronx Terminal Market?

A. Yes, sir.

Q. And did you hear the testimony of Mr. Richard May on behalf of the New York Central?

A. I did.

Q. Now, has there been any change in the method of unloading at either of these points since the original hearing?

A. No, sir.

Q. So that the method of unloading at the present time is the same as that testified to by Mr. May at the original hearing?

A. Yes, sir.

Mr. Brown: That is all.

Exam. Brown: Any further questions on direct examination?

(No response.)

Exam. Brown: Cross examination of this witness will be [fol. 1368] deferred temporarily in line with the agreement made off the record.

You are excused, for the moment, sir.

(Witness excused.)

J. L. Heywood was sworn and testified as follows:

Direct Examination.

By Mr. Miller:

Q. Will you please state your name, business address and position with the Pennsylvania Railroad?

A. J. L. Heywood, assistant comptroller of the Pennsylvania Railroad.

Q. Are you acquainted with a man named Dilks at the Pennsylvania?

A. Yes, sir.

Q. Is he one of your subordinates?

A. That is correct.

Mr. Miller: Mr. Examiner, I should like to offer for identification, an exhibit marked Pennsylvania Railroad Unloading Costs at Piers 27, 28, 29, New York.

Exam. Brown: This Exhibit No. 129 is similar to the two prior cost exhibits. It is received in evidence subject to the same objections and subject to the same ruling as made with respect to the prior cost exhibits.

(Respondent's Exhibit No. 129, Witness Heywood, received in evidence.)

[fol. 1369] Mr. Miller: And also exhibit identified as Pennsylvania Railroad Unloading Costs at Produce Terminal, Philadelphia, July 17 to 23, 1949.

Exam. Brown: Has that been distributed?

Mr. Miller: Yes, sir.

Mr. Loos: I do not have a copy, Mr. Examiner.

Mr. LaRoe: We have only one over here.

Exam. Brown: I have no copy of the exhibit and the reporter has no copy of it.

(The exhibit was distributed.)

Exam. Brown: The exhibit is No. 130 and is received in

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evidence subject to the same comments I made concerning Exhibit No. 129.

(Respondent's Exhibit No. 130, Witness Heywood, received in evidence.)

By Mr. Miller:

Q. In preparing this exhibit, Mr. Heywood, did you follow the same methods used in the preparation of Mr. Dilks' previous exhibit?

A. Yes, sir.

Q. Will you explain for me what you mean by "cost per unloading gang productive man hour" and how that figure is obtained?

A. That is the actual time of the man productively unloading the perishable traffic.

Q. And how was it obtained?

A. Obtained from a time study, by actual check for the [fol. 1370] week of July 10 to the 16th, 1949.

Q. Is it correct that to obtain that figure, you divided your unloading gang productive man hours, shown on your exhibit, into the total unloading costs to Pennsylvania Railroad, shown on the exhibit?

A. That is correct.

Q. Is it correct that in making payments to the Penn Stevedoring Corporation the contract provides that certain payments shall be made on a tonnage basis and that other payments shall be made on a different basis?

A. That is correct.

Q. And how does your exhibit show the breakdown of the computation of the payment to Penn Stevedoring Company?

A. The total payment to the Penn Stevedoring Corporation for the period covered was $7,394.67, and the breakdown of that is shown at the bottom of the exhibit, shown on a tonnage basis as $5,081.53, and the balance covering both wages and workmen's compensation and payroll tax covered the rest of the five remaining items at the bottom of the page, making the total of $7,394.67.

Q. I notice at the foot of the exhibit you show a figure of $4,370.50. Can you explain the difference between that

figure and your total figure of $7,394.67 of your payment to Penn Stevedoring Corporation?

A. Yes. The payment to the Penn Stevedoring Corpora- [fol. 1371] tion, beyond straight wages of the cleaners and car movers, lampmen, repairmen, etc., covers the workmen's compensation and also in the amount of tonnage basis it includes an overhead charge by the contracting company. It covers such things as rental of their office, etc., supervision, and so forth.

Q. Does your figure of cost for unloading gang productive man hours reflect in any way the efficiency of the operation of the pier?

A. Yes. It shows an improvement in the efficiency.

Q. I do not think you understood my question, Mr. Heywood. Referring to your figures shown on Exhibit No. 129 of costs for unloading gang productive man hours——

A. Oh, that particular item?

Q. Yes.

A. I beg your pardon. I was thinking of the entire exhibit. No, that does not show any gain in efficiency in the operation of unloading.

Q. Is it correct that any difference between that figure and the figure shown on Mr. Dilks' Exhibit is purely an increase in the cost to Penn Stevedoring Corporation as computed on the basis of the number of man hours expended?

A. Not only Penn Stevedoring, but also our own employees at the station.

Q. Now, do you have a figure which shows whether or not there has been any increase in efficiency on the pier? [fol. 1372] A. Yes. In taking the previous exhibit presented by Mr. Dilks, it showed that the average tons per man hour were about 1.74, whereas on this exhibit now, Exhibit 129, it shows that the average tons per man hour were 2.61.

Q. Now, turning to Exhibit No. 130, can you tell me whether this exhibit is prepared in the same manner as Mr. Dilks' previous exhibit with respect to Philadelphia?

A. It is.

Exam. Brown: What was that exhibit number, Mr. Dilks' exhibit number? What number is it?

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Mr. Miller: I do not know.

Exam. Brown: Does the witness know?

The Witness: I do not have it here.

Mr. Matson: 30.

Mr. Miller: Mr. Matson, is that the number of the Philadelphia exhibit?

Mr. Matson: Oh, I am sorry. I think that is the New York exhibit.

Mr. Miller: The New York exhibit was No. 30.

The Witness: If you wait a moment, I can get it from the file over there.

Exam Brown: It is not essential. We can look it up ourselves.

The Witness: I haven't got it right here with me.

Mr. Matson: 31 for Philadelphia.

[fol. 1373] Exam. Brown: It would be exhibit 31 you are talking about, when you refer to prior exhibit of Mr. Dilks' concerning Philadelphia. All right.

By Mr. Miller:

Q. Can you give me similar figures based on your Exhibit No. 130, and Mr. Dilks' Exhibit 31, as to whether or not the operation in Philadelphia is more or less efficient?

A. Exhibit 31 showed that the average tons per man hour were 1.96, whereas on Exhibit 130, it shows the average tons per man hour to be 2.46.

Q. In connection with both of the exhibits, do they reflect any increase in cost incurred by the Pennsylvania as a result of the change to a 40-hour week effective September 1st?

A. They do not.

Q. Did the Penn Stevedoring Corporation increase the wages of its employees on that date?

A. September 1st there was an increase in their charge through the contract.

Q. And were the wages of the Pennsylvania employees at Philadelphia similarly increased?

A. Yes, sir.

Q. If your exhibits were restated, to reflect the addi-

tional cost resulting from those wage increases, can you tell me what percentage of increase it would show generally in the costs shown on your exhibits?

A. Insofar as railroad labor is concerned, our own, it [fol. 1374] would be approximately 20 percent per hour increase, and insofar as the Penn Stevedoring contract at the present time, the increase is only effective September 1st, effective on the overtime. The tonnage rate, itself, has not been increased, but the overtime rate has, which comes about always on Sundays when there is overtime. The entire period is an overtime rate.

Mr. Fitzgerald: Is the witness referring to Philadelphia now?

The Witness: New York he said.

By Mr. Miller:

Q. Is it expected that the tonnage rate paid to the Penn Stevedoring Corporation will be increased in the near future?

A. I am not in a position to say whether that is under negotiation at this moment or not.

Q. In your statement that the increases were applied solely to the overtime, were you referring to increases applied to the payments by the Pennsylvania to Penn Stevedoring Corporation?

A. That is right.

Q. Now, was there a general increase in the wages paid by Penn Stevedoring Corporation to its employees?

A. Yes, there was an increase. They got an increase at the same time the railroad employees got an increase.

Q. That increase applied to all their wages and not solely to overtime, did it not?

A. That is correct.

[fol. 1375] Q. Now, you have said that the increase at New York amounts to 20 percent per hour. You attempted to determine what effect that increase would have on the figures in your Exhibit No. 129 showing cost per ton?

A. No, sir, I have not.

Q. Now, when you made your cost studies, did you include in your computation of time any of the time which the men spent in sorting the boxes of freight on the pier?

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A. No, sir.

Mr. Miller: That is all, Mr. Examiner.

Exam. Brown: Any further questions coming under the head of direct examination of this witness?

Mr. Smith: No, sir.

Exam. Brown: You are excused temporarily; cross examination to be conducted later.

(Witness excused.)

Exam. Brown: Off the record.

(Discussion off the record.)

Edwin M. Talbott, having been previously sworn, testified as follows:

Direct Examination.

Mr. Donadio: Mr. Talbott testified at the original hearing in this case and submitted two exhibits, 35 and 36, received in evidence at page 439 of the record. His testimony which deals with those exhibits is found beginning at pages [fol. 1376] 433 to 513. Mr. Talbott is here this morning to bring his cost records or his cost figures up to date.

By Mr. Donadio:

Q. Mr. Talbott, have you made a new study with respect to the out-of-pocket or actual cost of unloading at New York and Philadelphia for recent months or weeks?

A. New studies were made under my supervision for the period July 17 to July 20, 1949, at both Philadelphia and New York.

Q. Are you familiar with the present operation, unloading operations at both New York and Philadelphia?

A. I am.

Q. And is the situation with respect to the unloading operation any different now than what it was back in '47 as testified to by witnesses for the B&O Railroad at that time?

A. Based on our investigation, there has been no change in the operations.

Exam. Brown: You are referring to Baltimore and Ohio only now, are you not?

The Witness: I am referring to Baltimore and Ohio only.

By Mr. Donadio:

Q. Now, did you prepare, as a result of your cost study at New York, an exhibit reflecting the result of that study?

A. I did.

Mr. Donadio: May we have that exhibit identified, Mr. Examiner, as respondent's Exhibit No. 131?

Exam. Brown: Off the record.

[fol. 1377] (Discussion off the record.)

Exam. Brown: Exhibits 131 and 132, Witness Talbott, are received in evidence, subject to the same comments I have made with respect to other prior exhibits of this type.

(Respondent's Exhibits 131 and 132, Witness Talbott, received in evidence.)

Mr. Donadio: 131 will relate to the New York situation and 132 to Philadelphia.

Exam. Brown: They have both been received in evidence. Proceed, Mr. Donadio.

By Mr. Donadio:

Q. Mr. Talbott, will you take up the New York exhibit, 131, and describe what that exhibit shows, how you arrived at the figures?

A. This exhibit was prepared to show the expense in connection with the unloading of fresh fruits and vegetables at Pier 22, North River, New York, during the period July 7 to July 20, inclusive, 1949.

Now, on our piers, the floats are usually at the pier so the unloading can start at 5:30 p.m. on Sundays and 7:30 p.m. on weekdays. No fruit or vegetables were unloaded on Friday or Saturday night or a night preceding a holiday.

Now, during the two-week test period, in cooperation with the contractor who performed this operation for us, we had a complete record maintained of the time involved in handling each individual car; that is, all the time that could [fol. 1378] be directly assigned to the unloading operation.

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Now, this time was translated into costs as indicated on my exhibit.

Now, as indicated in the upper part of the exhibit, the unloading gangs incurred labor amounting to $3,375.76 which, with the Social Security taxes and the overhead, amounted to $4,017.15. That could be directly assigned to the individual traffic unloaded.

Now, all the other freight on our pier is handled by the B&O forces, so there can be no conflict in costs between our ordinary freight and this particular perishable traffic.

Q. Now, that overhead item, the item of overhead of 15 percent, is that the contractor's overhead?

A. That is what we pay the contractor. There is nothing included in here for any overhead of the Baltimore & Ohio except the foreman, which I will describe later.

Q. Now, the basis for compensation to the contractor is on a cost-plus basis; is that correct?

A. That is correct.

Q. And this 15 percent is the overhead which the contractor charges under the contract?

A. That is correct.

Q. Now, the other part is the railroad employees or labor?

A. Well, you will notice in the second group of figures an item amounting to $2,573.95, which could not be assigned to [fol. 1379] specific cars; that is also furnished by the contractor.

We have an item in there, cleaning floats and docks, of $1,243.09. That includes stand-up time also.

Q. Now, what do you mean by stand-up time, Mr. Talbott?

A. Well, under the labor contract which the contractor had with the labor organizations, we are required to employ a minimum of four eight-men gangs every night, and, of course, we augment those gangs as required.

Q. In other words, these men that are employed by the contractor are longshoremen, union men, are they not?

A. I think that is the union they belong to. They are not affiliated with the railroad unions.

Q. Yes, and under this contract the railroad guarantees to the contractor or the labor organization a minimum of

four gangs per night, eight hours per day, is that it, or eight hours per man?

A. Eight hours per man.

Q. And has to pay on that basis, no matter how long it takes them to perform the unloading service, is that right?

A. That is correct.

Q. And you have included in this cleaning floats and docks the so-called waiting time, the stand-up time, time that is in excess of the actual time of unloading; is that right?

A. That is correct; the time that could not be assigned to the other operations.

[fol. 1380] Q. And during this waiting time or this stand-up time, they performed this cleaning of floats and docks?

A. On some occasions they give them brooms and have them do some cleaning rather than stand around idle.

Q. Go ahead, Mr. Talbott, and explain your other items.

A. Now, during the two weeks of the study—I have before me here the contractors' bills which total $8,269.91. Now, we have excluded from those bills, for this two-week period, $10,707, covering the men who replace or recooper packages back in the piles.

We have also excluded $671.74, covering the additional costs on account of sorting, for which we collect additional revenue under the tariff.

Q. Those items are not reflected in the cost figures which are shown on this exhibit?

A. They are not, but everything else in the contractor's bill we consider a part of the unloading expense. It is just a question of how you are going to separate it in the exhibit.

Now, in addition to the contractor labor, we have some Baltimore and Ohio labor on the pier which amounts to $1,144.67 as shown in the third group of figures, and also an item of $81 for hauling away the rubbish; that is the time of the truck, hauling away rubbish. That makes a total cost of $7,816.77.

Now, in column 4, in the lower part of the exhibit, I have [fol. 1381] shown—I have distributed the $4,017.15 among the various commodities, fresh fruits, melons and vegetables, and so on. In column 5 I have distributed the remaining items of expense on a tonnage basis.

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Column 6 represents a total, the total costs for each commodity, and column 7 we have figured the average cost per ton, for New York.

Q. Anything more?

A. Nothing in connection with this New York exhibit.

Q. Anything more that you want to say about the figures shown on Exhibit 131?

A. Nothing further.

Q. Do any of these figures include any expense for maintaining equipment, lighting, or anything of that sort?

A. They do not. Nothing is included for lighting or heating the piers or maintenance of the trucks or any of that miscellaneous expense.

Q. Now, does that about cover the New York situation, Mr. Talbott?

A. It does.

Q. Now, will you take up Exhibit 132, which deals with the Philadelphia situation?

Mr. LaRoe: Off the record, I do not want to interfere with your presentation, Mr. Donadio, but unless there is something markedly different in the method of making it up, [fol. 1382] it seems to be pretty much the same on the face of it.

Mr. Donadio: You are referring to 132?

Mr. LaRoe: Yes. I mean, does it required detailed explanation?

Mr. Donadio: Not as much as 131, but I do want him to take up the basis for his computations.

Exam. Brown: Go ahead, Mr. Talbott.

A. Well, this exhibit, Exhibit No. 132, shows costs at Philadelphia for the same period. Now, here we have a different proposition in that all the unloading operations performed are by railroad company employees. However, practically all of the expense is incurred by gangs employed at night, and all of them are paid on a separate weekly payroll, apart from our other employees at Philadelphia.

Q. How do you pay the railroad labor at Philadelphia?

A. Well, the night unloading gang which perform nearly all of the operations is paid on a piece rate basis of $12.90 per gang, per car. Each gang consists of six men. Now,

that rate applies when the unloading is performed by a standard gang. In other words, if we have an extra trucker in the gang or an extra piler, we would pay $12.90 plus the salary of this extra trucker or piler, and that happens frequently because we are required to work under the labor agreement all the men on the payroll each night, and we have to have, of course, extra men coming out in order to [fol. 1383] keep the gangs filled up. So we have extra men practically every night in every gang.

Now, also, if a car contains more than the standard number of packages, we are required to pay an excess amount over the $12.90.

Q. That is all covered by the agreement between the railroad company and the union organization of which these men are members?

A. That is correct, and then, in many instances we have to unload a car in as high as three installments. Well, if that car were handled by the night gangs, we would pay $12.90 plus additional charges, as I explained, for each installment.

Exam. Brown: You think. Do you know?
The Witness: I did not say I think.
Exam. Brown: I thought you did. I misunderstood you.
The Witness: No, no.

(The reporter read the witness's last answer.)

Exam. Brown: That indicates a necessity for your speaking up if I cannot get you clearly because it is going to be difficult for the back of the room to get you as clearly. Go ahead.

A. (Continuing) Well, in many instances where we have cars of, particularly, apples to be unloaded, and we would have this installment unloading, we would have an additional, extremely high cost in some instances on account of [fol. 1384] the applies and deciduous fruit unloading. We do not have many cars of citrus fruit which are unloaded in installments. In fact, there were none during this two weeks of the study.

By Mr. Donadio:

Q. Well, now, the result shown on Exhibit 132 is based

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on an actual study that was made of the actual operations there at the Philadelphia Terminal; is that not so, Mr. Talbott?

A. That is correct; for the period of the study we have the complete record where each individual car unloaded, the number of men, each man, the number of men assigned to each car, and the number of excess packages paid for in each car.

Q. These figures are all actual expenditures by the railroad company for performing that service?

A. They are.

Q. Now, will you go ahead, Mr. Talbott, and make whatever explanations are necessary that are not obvious from the face of the exhibit?

A. I might say that we have excluded in these figures any expense in connection with the placing of the recoopered packages in the pile where they belong. Nothing is included for police protection at Philadelphia because of the assignment at the present time of our police forces.

Q. You have left out any police items, right?

A. That is correct, for the Philadelphia study.

Q. Now, Mr. Talbott, you were present yesterday when [fol. 1385] Mr. Shapiro testified, and he introduced Exhibit 112, purporting to show the cost of unloading at Philadelphia.

A. I was.

Q. Do you have a copy of his exhibit before you?

A. I do.

Q. Will you proceed in your own way to make any comments concerning it that you deem necessary?

A. Well, this particular exhibit appears to be of no value in indicating the cost of unloading our perishable traffic at Philadelphia. In the first place, it does not cover as much as a full night's operation. Sunday night is usually the heaviest unloading night during the week and naturally we would have to have at least a complete week's operation. In fact, we went to the trouble to obtain the figures for two weeks' operations in order to arrive at what we thought was more nearly the average costs.

Now, the results are based on incorrect premises. In the first place, Mr. Shapiro determined the minutes involved

in unloading each individual car, that is, each of these 25 cars. Well, minutes has no relation at all to the method we use in compensating these gangs for the work performed. We pay them on a per car basis, as I previously described in connection with my exhibit on the costs at Philadelphia.

Mr. Shapiro assumes a rate of so much, $1.50 per hour. Of course, this has no relation to the cost of unloading. In [fol. 1386] fact, I do not see how you could arrive at anywhere near the approximate cost of handling our traffic from this incomplete study made by Mr. Shapiro.

Mr. LaRoe: Well, I do not want to interrupt, but he explained very carefully that he was not undertaking to show your costs. He was undertaking to show what his costs would be if he used an assumed rate of $1.50. His figures are right according to his own assumption, but he did not try to show what your costs are.

The Witness: Well, his figures are all based on assumptions, and as far as I am concerned, they have no value.

By Mr. Donadio:

Q. Do you have anything else, Mr. Talbott?
A. No, I do not.

Mr. Donadio: That is all.

Exam. Brown: Any further questions of this witness coming under the head of direct examination?

Mr. Donadio: As I understand, Mr. Examiner, the exhibits have been received.

Exam. Brown: That is correct.

You are excused temporarily. Your cross examination will be conducted later.

(Witness excused.)

Exam. Brown: Go off the record at this time for the purpose of discussing procedural matters.

(Discussion off the record.)

[fol. 1387] Exam. Brown: All right, Mr. LaRoe, we will hear from you.

Mr. LaRoe: Mr. Examiner, in accordance with your sug-

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gestion, counsel for the protestants conferred during the recess and concluded that they would not cross examine any of the witnesses.

Exam. Brown: Have you any statement to make in connection with your failure to cross examine?

Mr. LaRoe: Yes. We fail to cross examine, not because we accept the figures as accurate, but because we feel that whether they are accurate or not, they have nothing to do with the issue in the proceeding because it is quite immaterial, as we see the case, what the cost of unloading is.

Exam. Brown: The commission might disagree with you on that point. They might consider that the unloading charges should be considered separately from the line-haul charges. Have you lost any rights in your failure to cross examine?

Mr. LaRoe: Well, that is a risk we have to take, and we are willing to take it.

Exam. Brown: All right, sir. There will be no cross examination of these cost accounting witnesses; therefore, they are now excused.

Mr. Hoffman: Mr. Examiner, am I to understand, then, that all the points that were developed on cross examination at the previous hearing will be applicable here?

Exam. Brown: Yes, sir. It should be understood at this [fol. 1388] time that all the record in the prior hearing will be considered a part of this case, and can be used by any party in their briefs or otherwise.

Your next witness, please.

JOHN L. WEBB was sworn and testified as follows:

Direct Examination.

By Mr. Miller:

Q. Will you state your name and business address and position with the Pennsylvania Railroad?

A. My name is John L. Webb; my business address is room 1442, Broad Street, Suburban Station, Philadelphia; my position is manager of stations and motor service on the staff of the vice-president.

Q. Being on the staff of the vice-president, does that mean that your position as a system officer is distinguished between a regional or divisional office?

A. That is right.

Q. Are you the system officer having jurisdiction over the methods of operations at stations of the Pennsylvania Railroad?

A. Yes, sir, over the stations of passenger and freight stations, and of the motor service for and by the railroad. In that position, the two stations of the Pennsylvania that have been discussed here at New York and Philadelphia come under my jurisdiction.

Q. Can you tell me whether there has been any change [fol. 1389] in the methods of operation of the Pennsylvania at the produce terminal in New York and the produce terminal in Philadelphia, as compared with the description given at the previous hearing by witnesses Pettit and Hampton?

A. There has been no change.

Q. Will you describe in a general way the facilities maintained by the Pennsylvania which are known as Ball Ground and Waldo Avenue yards?

A. Ball Ground team track at Jersey City and Waldo Avenue team track at Jersey City are what might be called normal team tracks with driveways between the series of tracks that patrons can back their equipment up to the truck and take a delivery right from the car. The width of the driveways runs from 50 to 70 feet and are, in every case, as large, as wide as any driveways of any team yards of which I have knowledge, and larger than most, wider than most.

Q. Was Ball Ground team track yard recently reconditioned and improved?

A. Both Ball Ground and Waldo Avenue were recently reconditioned and improved.

Q. Is it correct that watermelons and juice grapes were once unloaded at pier stations by the Pennsylvania and are now unloaded exclusively in Jersey City?

A. Well, quite some years back there was an unloading of watermelons at our Wallabout Station in Brooklyn which [fol. 1390] no longer exists, having been taken over as a

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part of the Navy yard, and there was and has been large unloadings of both commodities on the Jersey team tracks.

Q. Is it correct that the volume of perishable traffic destined for the New York markets which have been unloaded in Jersey City over the course of the years has been generally on the increase proportionately to that volume unloaded at the pier station?

A. Yes, I would say so.

Exam. Brown: You are talking about what commodities now?

Mr. Miller: Perishables.

Exam. Brown: You are talking about watermelons?

Mr. Miller: No, sir.

Exam. Brown: There has been no increase in watermelons, has there?

The Witness: Yes, there has been an increase in watermelons as the population increases.

Exam. Brown: I am talking about the increase as a result of diversion.

The Witness: No, sir, not a hundred percent unloading in Jersey City on watermelons, but on the other traffic there has been an increased tendency to take delivery on the team yards.

Exam. Brown: In Jersey?

The Witness: In Jersey.

[fol. 1391] By Mr. Miller:

Q. It was as a result of that long-time trend, was it not, that the Pennsylvania reconditioned both the Ball Ground and Waldo Avenue yards?

A. That is right, and also built the Manhattan Produce yard out in the meadows, a little farther from the Jersey shore.

Q. Now, did anything happen in the fall of 1948 which gave an added impetus to that trend to take delivery in Jersey City?

A. Yes, sir. For a short period, the traffic, most of the traffic, went to Jersey City.

Q. Now, what change did the Pennsylvania make in its operating practices which induced that shift over to Jersey City?

A. Well, taking delivery from the team yards in Jersey City, you have a wider scope of delivery. In other words, those yards were open 24 hours a day, and there are not the restrictions on the unloading and delivery operations that there are, must necessarily be, on a pier operation.

Q. And it was that advantage in obtaining the freight from the car at any time of the day which induced the gradual flow of the traffic to Jersey City, is that correct?

A. That is right.

Q. Now, did you also establish in the fall of 1948 a cut-off time for deliveries at the pier stations?

A. Yes, sir. There was a cut-off time, as I recall it, that had to be at 2 p.m. in the afternoon in order to get the cars over to New York and unloaded for the following night's [fol. 1392] operation.

Q. Can you tell me, Mr. Webb, whether vegetables are sold on the piers?

A. They are.

Q. Can you tell me whether there is any difference in the method in which you unload this perishable traffic on piers as between freight which is destined for auction sale and that which is destined for private sale on the piers or for delivery to the receiver there?

A. Not of any consequence, no, sir. A certain type of the freight is a little slower to unload and has to be handled with extraordinary care as related to the general performance.

Q. Now, what functions does the Pennsylvania Railroad perform in connection with this traffic after the freight has been delivered to the receiver?

Mr. LaRoe: Objection. Could not possibly have anything to do with the case, if it is performed after the delivery service has been completed.

Exam. Brown: My ruling in that is the same as in connection with the prior rulings with respect to that type of evidence. We have quite a bit of evidence in here with respect to what happened after simple delivery. I am going to permit the witness to answer.

A. Well, I should like to preface that by saying that there is no such a thing as simple delivery on perishable traffic,

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[fol. 1393] for the reason that the actual delivery of the traffic is not accomplished until everything has been taken from the piers. By that I mean that we will unload a car for a market and at the opening of the market the consignee will have signed for that car.

But, if he does not dispose of that, it is not driven off the pier at the end of the day, he turns that back to the railroad.

Now, that is done—that is quite a general practice, and it is done in two ways: one by just a mutual count between the railroad employees and the consignee's representative, or it may be done by an actual signature, but for any freight that is on the pier at the close of the day, the railroad has to assume responsibility until the following morning when the reverse operation takes place. The consignee then signs for the railroad for the freight that was turned back to them the previous day, and there are other factors that get into that same situation. We have to protect that freight that is left on the piers, meaning that outside of the protection of the physical property, we have to furnish heat to see that it is not damaged by the weather, and we also have to take any small lots that the consignee may have left on the pier and consolidate that, to make room for general unloading of other cars.

So that actually there is a continuing delivery process [fol. 1394] until the last package has left the pier.

Now, at New York particularly, it is not unusual on auction freight to pull a car off the auction after it has been advertised; then that is turned back to the railroad and we have the responsibility for that complete car until it is again disposed of.

On refuse traffic—and there is quite a little of that—then we have to take care of the entire car and make some disposition of it.

So really, there is no delivery, no complete delivery, until the last package has gone from the pier.

Q. Will you describe what has been called "delivery on the fly"?

A. Well, at times when a car may be light or there may be ice in the river or something that may interfere with getting the freight over and getting it unloaded, a consignee may be waiting for part of the freight as it comes

out of the car, and what we call delivery on the fly is delivery right from the car to the tail gate of the truck.

Now, that means this: bringing the freight out of the car, it follows trucks, platform truck after platform truck, say, maybe ten of them might go on a truck, and the next ten will go on the pier and be picked up later by the truck. It is a name and a practice to avoid delaying the trucks on the piers. It is convenient.

[fol. 1395] Exam. Brown: Isn't it unusual?

The Witness: No, it is not frequent, but it is not unusual. I presume as between the two categories you would have to call it unusual, Mr. Examiner.

Exam. Brown: Well, I will use the word "frequent" then. I will coincide with your language. It is not frequent, is it, that you do that?

The Witness: It is not frequent, but it is often done.

Exam. Brown: Well, how frequently is it done?

The Witness: Oh, I would say perhaps four or five times a week for various consignees, all depending on the seasons and the volume of traffic and matters of that kind. That is pure conjecture on my part, and I have no records to substantiate that.

Exam. Brown: All right, Mr. Miller.

By Mr. Miller:

Q. Turning now to Philadelphia, Mr. Webb, can you tell me how many consignees at Philadelphia prior to November 1, 1948, performed their own unloading?

A. Well, there was only one consignee that did anything of that type and that was Mr. Tredwell's company, the Smiling Jim Potato Company, that testified here yesterday. Occasionally he did unload a car or more or a part car.

Q. Now, has there ever been a time, to your knowledge, that the terminal in Philadelphia, when your team-track capacity was not such that it could accommodate all the cars [fol. 1396] then being unloaded on the team track, as well as all the cars then being unloaded at the freight house?

A. Not in normal times, no, I mean, other than strike conditions or something of that kind, and if that condition did obtain we would increase those team yards.

Q. Now, the reduction in the capacity of the team tracks

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at Philadelphia was made, was it not, partly because you felt that you did not need all the tracks previously available and also from the standpoint of operating efficiency to increase the ease of your operations at the station?

A. That is right, and also deliveries, patron deliveries in the yards to improve the facilities for taking freight out of the yard.

Q. Now, can you tell me why it was that the Pennsylvania, when the trade asked permission to perform their own unloading at Philadelphia, denied that request?

A. Yes. That was because this is a public facility and we never felt assured that the interests of the entire public would be protected if we carried through with the possible lease to the Association. There are quite a few people who received freight who are not members of the Association.

And then, that brought up the question of possibly having to hold a part of the facility for what I will term the "unusual customer." But perhaps the biggest factor of all is this question of labor. Our employees have been un- [fol. 1397] loading the fruits and vegetables at Philadelphia for many years, and any attempt to take that work away from them, outside of a situation of absolute necessity, we felt would create problems that had better be left unsolved or undeveloped.

Q. Now, was it also true that in considering the proposal to lease the terminal and have the trade pay the cost of railroad labor that the Pennsylvania was of the opinion that any such procedure would amount only to a reduction in the tariff charges without any actual change in the practice or the work performed by the Pennsylvania, and for that reason felt that such an arrangement would be unlawful?

A. Yes. It would be rather difficult to place the entire cost of the operation on that sort of a basis. We would have expense beyond the actual physical unloading of the property that has to be considered in connection with the operation of a facility of that kind.

Q. Now, with respect to this question as to delay in handling the freight on B platform at the terminal in Philadelphia, I believe it was Mr. Hampton's testimony

that when the trucker brought his two-wheel truck from the car, he waited at the location on which the freight was to be piled, while the receiver's men took the freight off the two-wheel truck, inspected it and placed it on the piles on location.

A. That is right. That was Mr. Hampton's testimony, and that is the correct description.

[fol. 1398] Q. Now, on A platform, when the four-wheel trucks come out of the car, is it correct that they are first taken on to the center of the platform?

A. Center aisle dividing the house.

Q. And then in taking the freight off the trucks, the trucks move toward the outside of the platform, do they not?

A. Yes, sir; move to the outside of the platform.

Q. Now, from your observation of that operation, is it true that as individual trucks come out, they can be unloaded at a particular spot on the area covered by a particular car, or do the men have to take out from each four-wheel truckload individual boxes to be placed at separate spaces on the platform?

A. The loaded truck starts from the center of the aisle, the center of the platform, and moves towards the end of the platform or the side of the platform, driveway, and as they pass the spot, as the truck passes the spot that is laid out with individual lines, that line is taken off, and whatever packages happen to be on the truck, and piled with the other freight of that category, so that when the truck reaches the end of the line, it is empty.

Q. And most all of those trucks do not contain packages, all of which are placed on a pier, on a particular line pile on the platform, but contain individual packages for a number of different, separate piles?

[fol. 1399] A. That is right, and that is why I could not understand the testimony yesterday that these packages were loaded together in the car, because that is not our experience.

Q. What sort of a facility, Mr. Webb, does the Pennsylvania maintain for handling perishable traffic at Baltimore?

A. They have a house at Baltimore located at one side of our team yard. That house, however, is not conducted as an ordinary terminal would be, meaning that it is leased

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out to the patrons, to consignees. They lease the platform spaces by doors, with about 20 to 30 feet surrounding platform space for each door, and then they have their offices leased upstairs. The only part of the facility that the Pennsylvania Railroad really keeps for itself is the agent's office.

Q. You described the Pennsylvania Produce Terminal as a public facility. In that terminology, would you say that the Baltimore operation was a public facility?

A. You mean the Baltimore house?

Q. Yes.

A. Well, it is not the same kind of facility as the Philadelphia Produce Terminal is because it is a leased job.

Q. And the Pennsylvania does not perform any unloading at that facility?

A. We have never performed any unloading at that facility.

Q. Have you ever been requested to perform such unloading?

A. We have never been requested to.

[fol. 1400] Q. Now, at the time the Pittsburgh Produce Terminal was built, is it correct that the Pittsburgh trade asked the railroad to institute an unloading service at that point?

A. That is right.

Q. And it was only in response to that request that the Pennsylvania began to unload at Pittsburgh?

A. Yes, sir, with the exception of the auction facility, that part of the house devoted to auction traffic. The auction company unloads its own freight, again except when they got a very low volume of traffic, rather than order out their men, they won't have enough to keep them busy, they ask the railroad to unload the few cars they may have.

Ordinarily, they unload their own traffic.

Q. Can you describe the past handling of perishable traffic in Chicago?

A. At Chicago there is a team yard with a supplementary house that is handled independently. We do not operate that as a Pennsylvania facility. It is a joint facility.

Q. Does the Pennsylvania collect any rental for auction rooms at Philadelphia or at New York?

A. No, sir.

Q. What is the number of the auction rooms in New York?

A. Nine.

Exam. Brown: On the Pennsylvania?

The Witness: Yes, sir.

[fol. 1401] Exam. Brown: Only?

The Witness: Well, there are auction rooms on the Erie Railroad, also, but I am only talking about Pennsylvania.

Exam. Brown: Your figure is with respect to the Pennsylvania Railroad only?

The Witness: That is right.

By Mr. Miller:

Q. Mr. Webb, I cannot recall anything else that we discussed about your testimony. Is there any other matter that you have in mind that you would like to testify about?

A. Well, there is just this one question about this handling of import traffic at New York, and that related to what happened to the traffic after it came off the steamship, and the way it is handled is, it goes on lighters and is floated to the Jersey City piers, and is not handled over the normal produce facilities on piers 27 and 28.

Mr. Miller: I believe that is all, Mr. Examiner.

Exam. Brown: Any other direct examination?

Mr. Smith: No, sir.

Mr. Brown: No, sir.

Exam. Brown: Cross examine.

Cross examination.

By Mr. LaRoe:

Q. I should like to ask you first about the pier station delivery. Let us take first vegetables, those that are unloaded on your pier station. Now, this being a perishable [fol. 1402] food product, it is the general custom to get it away from the piers as soon as the trade can conveniently get it away, isn't it?

A. Well, you have your regular market hours, delivery hours, yes, sir. New York happens to be a little more

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complicated. They have more than the normal number. Usually it is one hour. They have three or four down in New York.

Q. You mean three or four hours?

A. Yes, for delivery.

Q. But, this food generally is taken away from the piers within three or four hours after you put it there, isn't it?

A. No, not always, no.

Q. I did not say always. I asked if that is not the general rule?

A. That is the general practice, yes, sir.

Q. Let us not get into exceptional cases.

A. I am not into exceptional cases. I say it is general, that is the procedure, but we are troubled all the time with this traffic that is left on the pier, that we have to take care of during the night.

Q. I do not expect you to let occasional situations become general. Now, let us deal with the average shipment of vegetables like potatoes that comes into your pier station. How long does the average consignment of potatoes remain [fol. 1403] on your pier station after you put it on the floor?

A. I would be unable to give you that information, except that it generally moves within the free storage period.

Q. Why, certainly.

A. But that is two days, Mr. LaRoe.

Q. You mean to say that the average shipment does not usually move out the same day?

A. No, I did not say that. I say I have no figures, sir.

Q. Well, is the answer to my question that you do not know?

A. No, sir. The answer is not that I do not know. When you asked the percentage, I cannot give it to you. But, there is——

Q. Do you know enough about it to know whether the average consignment of potatoes moves out not only on the same day, but within half a day?

A. I would not know, no, sir.

Q. You do not know. Then the answer to the question is that you do not know. Would your answer be the same if I ask you regarding other types of vegetables?

A. I would not be able to break it down and tell you which goes and which don't go.

Q. Now, with respect to potatoes or any other vegetable, after you put it on the floor of the pier, it is there accessible to the truck of the consignee, and if he wants to take it away, you, of course, let him; isn't that right?

A. That is right. He signs for it and he does whatever he [fol. 1404] cares to do with it.

Q. And it leaves your jurisdiction and enters his jurisdiction when you put it on the floor of the pier; isn't that right?

A. When he signs for it, yes, sir, and that is when the car is completely unloaded, yes.

Q. When you say "completely unloaded" you mean taken off the carfloat and put on the floor of the pier?

A. That is right.

Q. And then it comes under his jurisdiction and leaves your jurisdiction?

A. It is his jurisdiction, if he takes it off the pier that day.

Q. No, I am asking you if he does not have the right at that point to take it off the pier, if he wants to, at that very moment?

A. He has more than a right; he has an obligation.

Q. He has an obligation and a right to take it off as soon as you put it on the floor of the pier?

A. Yes, sir, that is right.

Exam. Brown: Let us get this straight. Is there obligation for him to take that off before conclusion of free time?

The Witness: Not any more, no, sir.

Exam. Brown: Let us be careful how you testify.

The Witness: Not any more. There was at one time, but that is not observed right now. There used to be a time [fol. 1405] when these piers had to be cleared every night, but over the years that drifted away.

By Mr. LaRoe:

Q. But you consider, do you not, that when you have placed it on the floor of the pier, you have made delivery to him?

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A. That would be our normal conclusion.
Q. Yes.

Mr. Miller: Now.
Mr. LaRoe: Just a minute, don't let's interrupt.
Mr. Miller: I do not want this confused. I do not want the record to indicate that it is Mr. Webb's testimony that the instant the freight is on the pier it is then in the custody of the receiver.
Mr. LaRoe: Well, now, just a minute, I would rather you would not shade his answers.
Mr. Miller: He did not state that. He said that as soon as it is placed on the pier and delivered to the receiver, it then become subject to his custody.

By Mr. LaRoe:

Q. Well, isn't it customary for you to try to get it signed for as soon as you put it on the floor of the pier?
A. Before the market is opened?
Q. Yes, before the market is opened, it is signed for?
A. That is not always right either.
Q. Well, have you got any exception or occasional thing [fol. 1406] that you want to refer to?
A. Well, we have difficulty getting signatures all the time, but for your purpose, we will assume that is correct, Mr. LaRoe.
Q. All right. Thank you, sir. Well, now, if it be true that in the normal course of events you place the vegetables on the floor of the pier and as soon as you can get it signed for he may take it away from there and, if, as you say, that is the normal and usual situation, why isn't that simple delivery?

Mr. Miller: Objection. I do not want this witness to argue this case. Now, if Mr. LaRoe has any facts he wants to obtain from this witness, I want the witness to answer them.
Exam. Brown: Don't forget that your witness at the start of his testimony referred to the simple delivery and stated that it is not as simple as it sounds.
Mr. Miller: And that is right. The witness went on to

explain what he meant, in factual form, and the reasons why it was not just a simple process.

Exam. Brown: It will be understood that the responses of this witness are to be considered solely from a factual standpoint. So far as legal conclusions are concerned, we do not expect this witness to make any such conclusions. If he does, they will not be so considered. They will not be considered by the Commission.

Mr. Miller: A general ruling of that sort is not quite [fol. 1407] fair to the witness, I do not think, Mr. Examiner. Mr. LaRoe will place question after question to this witness, saying if this is so, therefore you mean this is so, or if this is so, why isn't this so? Now, such questions are argumentative, are unfair to the witness, and unfair to me, and I think they should not be permitted.

Mr. LaRoe: In other words, I am not to cross examine the witness.

Mr. Miller: I did not say that.

Exam. Brown: Well, go ahead. Let us get along. You can answer the last question.

Mr. LaRoe: Let me try the question again. I think it is perfectly within his direct examination.

By Mr. LaRoe:

Q. In your direct examination, you said there was not such a thing as simple delivery. I understood you to say, in answer to my questioning, that in the usual, normal case, with respect to vegetables, the vegetables are taken out of the car and placed on the floor of the pier and signed for even before the market opens, and in the normal course of events taken away soon. Now, why isn't that simple delivery?

A. I would agree that when a car moves off, as you describe, it is simple delivery as you describe.

Q. Wouldn't you go further and say that what I have described is the customary situation rather than the exceptional?

A. I will say it is the situation for anybody who trucks [fol. 1408] their freight the day it is unloaded.

Q. That does not answer the question.

A. I know it does not, but I cannot answer your question as you put it, sir. You are trying to have me say that

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is a general situation, and discount what you call the exceptions, which I call an important part of the delivery process.

Q. But you regard them as exceptional, don't you?

A. No, I do not regard them as exceptional; any one of those as exceptional.

Q. Do you mean to tell me that it is not exceptional for a consignee to turn a car back on you; that is the normal course of events?

A. It is not unusual at all.

Q. Is it the normal course of events to have a car turned back?

A. When a consignee does not want to take a car, he turns it back. It is 100 percent with that sort of a job.

Q. Is the average car turned back in that way?

A. There isn't any average, Mr. LaRoe.

Q. I mean the preponderance of the shipments?

A. Oh, I will agree that the preponderance of shipments are not——

Q. Turned back?

A. ——turned back, yes.

Q. All right. Now, let us deal with the normal preponderance of shipments that are not turned back. Why [fol. 1409] isn't placement of those on the pier simple delivery?

A. Because—— well, I will give you some of the reasons. I will give you some more that refer particularly to that shipment. We have got to police those piers. We have got to see the traffic gets in and out, all complications affecting deliveries, Mr. LaRoe.

Q. I do not see what that has to do with the question I am asking you, whether or not the pier is policed; when you put that on the floor of the pier, he can back up with his truck and pick it up and take it away?

A. Yes, he can.

Q. And that is what he usually does; that is what he wants the freight for. He wants the freight. He does not want you to have it.

A. That is what we would like him to do.

Q. And isn't that what usually happens?

A. By the term "usually," if there is a proper understanding between you and I of what is usual, yes.

Q. Why isn't that simple delivery then?

A. I said that is simple delivery from that point of view.

Q. Why did you say in your opening statement there isn't such a thing as simple delivery?

A. Because that is not the way the thing is worked out, Mr. LaRoe. We just cannot provide for what you call simple delivery.

[fol. 1410] Q. All right. Let us go on to something else now. With respect to Jersey City yards, will you give me the names of the team track yards that you mentioned over there?

A. Ball Ground.

Q. How do you spell that?

A. B-a-l-l Ground.

Q. Is that the same as Henderson Street?

A. That is Henderson Street.

Q. I think the staff used Henderson Street. What was the other one?

A. Waldo Avenue. That is another Jersey City delivery.

Q. You do not prefer that carload shipments of fruits and vegetables be delivered over there rather than at the pier stations, do you?

A. I certainly do.

Q. You do?

A. Yes, sir.

Q. Why?

A. Why? That takes away all the difficulties and the expense of lighterage, a very unusual expense for delivery of traffic in New York Harbor, one that you have only at a few places in the country. It means a stabilization of the market.

Q. You would like, then, would you not, to discourage the use of pier stations?

A. I would like to see the perishables delivered in Jersey [fol. 1411] City, Mr. LaRoe.

Q. You would like to see the handling of perishables at the pier stations in New York discontinued entirely if you had your choice, would you not?

A. That would be my view, yes, sir, for the benefit of the trade and for the benefit of the railroad and the public, as a whole.

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Q. We will take care of the public if you will take care of the railroad.

A. I shall try to do that, sir.

Q. As a matter of fact, after this charge went into effect soon after the first of November, you noticed, did you not, an increase in the use of those yards over there in New Jersey?

A. Yes, we did.

Q. And that is just what you wanted, wasn't it?

A. That is exactly what I should like to see.

Q. That made you happy, and it is, in part, for that reason, that you spent money for the rehabilitation of those team-track yards over there in New Jersey, isn't that right?

A. That is right.

Q. How many miles is that, generally speaking, from the produce market on Manhattan Island?

A. Well, I guess your guess is as good as mine. I would say a mile and a half.

Q. By truck?

[fol. 1412] A. Yes. That would be by truck.

Q. And toll charges are required to get the trucks through the tunnel?

A. That is right.

Q. Would you care to tell us how extensive was your reconditioning of those team-track yards; what did you do, and how much money did you spend?

A. Well, my recollection was a couple hundred thousand dollars, Mr. LaRoe, to fit those yards up.

Q. Did you say, also, that you set up a new yard? I did not get that very clearly.

A. The Waldo Avenue yard. It is, I should say, a mile and a half further inland than the Ball Ground. The delivery was used by the Railway Express for quite some time and we moved them out of there and built new team yards there for the accommodation of this traffic.

Q. Did you put in new tracks and eliminate some curbs?

A. Yes, we changed the tracks, eliminated the curb, made the driveways wider, and put in some solid surface driveways.

Q. That is at least three or four miles away from this

produce market in Manhattan?

A. I would say it is from three to four miles.

Q. Are you trying—and I do not mean this in a critical way—is it your policy to bring about a system of terminal delivery here that saves the railroad not only the lighterage, [fol. 1413] but imposes on the shippers three or four miles of trucking in order to save the railroad's expense?

Mr. Miller: Objection, Mr. Examiner. Mr. LaRoe has gone pretty far with this line of testimony, none of which is of any real relevance here.

Exam. Brown: Mr. LaRoe made an observation. I did not hear it. What did you say, Mr. LaRoe?

Mr. LaRoe: I said if it is objectionable, I shall not press it because I am going to argue it in my brief. All I am interested in here is to get the facts.

By Mr. LaRoe:

Q. And the fact is, Mr. Webb, that you not only have encouraged the use of the team-track yards in Jersey City, instead of the pier stations, but you have gone so far as to build a new yard a mile and a half further west for the purpose of attracting more traffic in that manner; isn't that right?

Mr. Miller: Objection.

Exam. Brown: Objection to the question, Mr. LaRoe.

Mr. Miller: It seems to me that the question goes far beyond any issue which can conceivably be material to this proceeding. The witness has described the facilities which are available for this traffic in Jersey City. Whether or not it be the policy of the Pennsylvania to attract the traffic to those facilities or not is immaterial. They have provided the facilities for any one who wishes to use it. [fol. 1414] There is no indication anywhere in the record that they have done anything to encourage the movement there other than to provide facilities, which, as Mr. Webb testified, were built in response to the demand which grew up there.

Now, for Mr. LaRoe to put additional words into the witness's mouth, explaining what may or may not be the policy of the Pennsylvania Railroad, is utterly immaterial, is unfair to the witness and should not be permitted.

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Exam. Brown: I cannot concede that that information is immaterial. It may not be helpful in the proper determination of the issues, but I think it is material. So far as being unfair to the witness is concerned, I do not think Mr. LaRoe intends anything of that kind.

Mr. LaRoe: If I am guilty of any unfairness, I want to be caught up on it quickly because I do not think it is right to be unfair. I do, however, want to make very clear our position on this point, which is that the imposition of this delivery charge is part of a design to, instead of serving the public, deny service, reasonable service to the public, in order to save the railroad some money, and even going so far as to make, try to make, New York consignees go all the way over into New Jersey several miles to get their freight.

That is our position and I think that is the relevancy of this thing.

Exam. Brown: The witness conceded that it would be a [fol. 1415] good thing so far as his company is concerned to have deliveries made in Jersey City, have you not?

Mr. LaRoe: He has made all the admissions I need.

The Witness: I went quite far with that, Mr. Examiner.

Exam. Brown: So I assume, Mr. LaRoe, that you may cover this in your brief, this particular phase.

Mr. LaRoe: That is right. Now, just one or two questions about Philadelphia.

By Mr. LaRoe:

Q. I got the impression from your testimony that after the freight is unloaded on the platform and from there placed on trucks, hand trucks for distribution to the locations on the platform, that there is some sorting of the freight according to the size or marks on the box; is that right?

A. Are you referring to vegetables or to auction freight, Mr. LaRoe?

Q. Auction freight.

A. Well, auction freight we do sort at Philadelphia.

Q. Without any extra charge?

A. That is right.

Q. Do you do anything like that at New York?

A. No, sir.

Q. Why do you do it free at Philadelphia and not do it free at New York?

A. I really cannot answer that question except to say that [fol. 1416] the practices in various communities differ. They seem to grow up from precedence established in the earlier years.

Mr. LaRoe: All right; that is all. Thank you very much.

By Exam. Brown:

Q. Do you make any sorting with respect to tomatoes at Philadelphia?

A. Well, tomatoes, no—yes, tomatoes, we sort tomatoes at Philadelphia.

Q. Do you?

A. Yes, auction.

Q. And you sell all auction materials then?

A. That is right, yes, sir.

Q. That includes citrus and tomatoes?

A. That is right.

Q. Do you ever sort free of charge or display merchandise subject to brands and so forth of any fruits or vegetables other than citrus and tomatoes?

A. Oh, yes, there are other commodities that come under the same category. All auction freight is sorted.

Q. Well, it is my understanding that only citrus and tomatoes are auctioned in Philadelphia. If I am wrong on that, I should like to be corrected by you.

A. One of us must be wrong now, and frankly, I will yield to you if you got that advice.

Q. Well, I have gotten that impression, not that advice.

Mr. Fitzgerald: I think I can clear that up through this witness, possibly, Mr. Examiner.

[fol. 1417] Exam. Brown: Well, I should like to get an answer to this question, and you be sure to develop it. Mr. LaRoe has concluded his cross examination. You proceed now.

Mr. Augello: I should like to ask a question, if I may.

Exam. Brown: Well, I should like to get the continuity right here. I do not want to break this question down and find the answer 15 pages later.

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By Mr. Fitzgerald:

Q. Mr. Webb, it is correct, is it not, that at the Pennsylvania Produce Terminal there are two platforms?

A. That is right.

Q. A platform and B platform?

A. That is right.

Q. For what purpose is A platform used?

A. Auction traffic.

Q. And what commodities are unloaded at A platform for auction?

A. Well, speaking just from general observation of the thing, citrus fruit.

Q. By citrus fruits you mean oranges, grapefruit and lemons?

A. Oranges, tangerines, grapefruit, everything like that.

Q. Grapes?

A. Yes, grapes are unloaded there.

Mr. Miller: I wonder if it would not be better here if we could just stipulated from our combined information as to what vegetables and fruits are auctioned in Philadelphia? [fol. 1418] Mr. Fitzgerald: Well, I think the direct testimony brings that out very clearly, and I think Mr. Webb on this next question will do so.

By Mr. Fitzgerald:

Q. Also sold at auction on A platform are certain deciduous fruits such as apples and pears, is that not correct?

A. That is so. I have seen those on there.

Q. Now, on B platform, what commodities are unloaded on B platform by the railroad pursuant to this tariff?

A. Vegetables and melons, general categories, potatoes.

Q. Certain fruits such as peaches may also be unloaded there?

A. Yes.

Q. Peaches not being sold at auction?

A. That is right.

Mr. Fitzgerald: Does that clear that up?

Exam. Brown: That clears up everything except the question I asked, whether or not you sort according to brand, sizes and so forth, any vegetables other than citrus and tomatoes.

Mr. Augello: On B platform, is that what you mean?

Exam. Brown: On no platform. I am asking whether they sort on any platform.

The Witness: You say any vegetables?

Exam. Brown: Any vegetables at Philadelphia or any fruits, other than citrus and tomatoes.

The Witness: Yes, not on B platform, but there are others [fol. 1419] sorted.

Exam. Brown: Sorted and displayed according to brands and sizes and so forth?

The Witness: That is right.

Exam. Brown: And what are they?

The Witness: Well, there is plums and grapes—and that is about all, as far as my general experience can tell you. Frankly——

Mr. Miller: Mr. Examiner, may we go off the record?

Exam. Brown: Let him finish his sentence, first.

The Witness: (Continuing) To tell you the list of commodities, I would just have to go through the list and tell you what I think was and what I think was not.

Mr. Miller: Mr. Examiner, I think at this time it would be proper to go off the record to formulate a stipulation according to your question. Mr. Webb obviously is not informed as to the specific details of all the miscellaneous commodities which may or may not be sold at auction at Philadelphia.

Exam. Brown: All right, we are off the record.

(Discussion off the record.)

Redirect examination.

By Mr. Miller:

Q. Mr. Webb, can you state what particular varieties of perishables are auctioned at Philadelphia?

A. No, sir.

[fol. 1420] Q. Do you know, Mr. Webb, when the Ball Ground yard was reconverted?

A. Do I know when?

Q. Yes.

A. The latter part of 1948.

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Mr. Fitzgerald: May I ask a question here, Mr. Examiner? Is this redirect? I haven't completed my cross examination.

Mr. Miller: I am sorry. May I ask that the questions be stricken?

Exam. Brown: All right.

Cross examination (continued).

By Mr. Fitzgerald:

Q. Now, Mr. Webb, I have asked you a few questions relative to platforms A and B at Philadelphia. It is true, is it not, that the railroad performs no sorting operations whatever as to platform B?

A. That is right.

Q. And it is also true that on platform A, to such extent as sorting may be rendered necessary for the commodity involved, sorting is performed at that platform?

A. By the railroad.

Q. And that pertains only to auction commodities?

A. That is right.

Q. Now Mr. Webb, you have mentioned in your direct that prior to November 1, 1948, Sol Tredwell had unloaded potatoes at platform B at his own expense. How fre- [fol. 1421] quently did you say he unloaded, and to what extent?

A. Very infrequently; just an occasional car.

Q. About how many cars per week, would you say?

A. Oh, it was not anything like that. I would say, from my information, it might have been one or two cars a month, when the potatoes were running, and that was done for the purposes of reconditioning and rebagging.

Q. Then it is your answer that Mr. Tredwell prior to November 1, 1948, did not unload more than two cars per month with his own labor at his own expense on B platform?

A. That is my estimate, yes sir.

Mr. Fitzgerald: It probably will be necessary that I recall Mr. Tredwell.

By Mr. Fitzgerald:

Q. Did I understand you to say that no one else unloaded at B platform at his own expense?

A. That is right.

Q. Do you say, Mr. Webb, that Mr. Dan Storie never unloaded at his own expense?

A. Not to my knowledge, sir.

Q. And that Mr. Sherman of Westcott & Company never unloaded at his own expense?

A. Not to my knowledge.

Q. And that Mr. Jones, another large receiver of potatoes, never unloaded at his own expense?

A. Not to my knowledge.

[fol. 1422] Exam. Brown: Off the record.

(Discussion off the record.)

Exam. Brown: We will recess until 2 p.m.

(At 12:30 p.m. a recess was taken until 2 p.m. of the same day.)

AFTERNOON SESSION—2 P.M.

Exam. Brown: Are you ready to continue your cross examination, Mr. Fitzgerald?

Mr. Fitzgerald: Yes, Mr. Examiner.

JOHN L. WEBB resumed the stand and testified further as follows:

Cross examination (continued).

By Mr. Fitzgerald:

Q. Now, as to Mr. Klein, another receiver in Philadelphia, is it your testimony that he also never unloaded potatoes at B platform with his own labor?

A. That is right; not to my knowledge, no, sir.

Q. Now, Mr. Webb, it is my understanding of your testimony that you conceded that the capacity of the team tracks adjoining Pennsylvania Produce Terminal had been reduced.

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A. That is right.

Q. I take it, then, that the figures given on direct examination of approximately 400 cars is approximately correct?

A. 500 is my recollection.

Q. Then is your testimony to the effect that the capacity of the team track is still 500 cars?

[fol. 1423] A. That is right.

Q. You are aware, of course, that the testimony at the previous hearing was that the maximum capacity was 510 cars, and I believe you testified on direct this morning that that had been reduced by the elimination of one track, at least?

A. Well, there was a rearrangement of the car unloading spots, the spots used for car unloading, to make a better operating condition in and out of the yard.

Q. Suppose you explain just what was done.

A. Why, we discontinued the use of certain of the tracks for the unloading.

Q. What tracks?

A. By name, I cannot tell you, sir.

Q. How many tracks?

A. Four tracks, if my memory is correct, sir.

Q. What would be the capacity of those four tracks?

A. I do not know.

Q. What is your best guess as to the capacity of those four tracks?

A. You mean the capacity, the total capacity of the tracks or the total discontinued capacity?

A. The total capacity of the tracks discontinued, the four tracks discontinued, as you testified.

A. I am sorry. I just do not have that information available, sir.

[fol. 1424] Q. In the previous hearing, Mr. Hampton testified that there were at that time 17 team tracks with a total capacity of 510 cars. That is as originally designed in 1927. Now, you have testified that four tracks were eliminated?

A. No, I said that a portion of the tracks were just discontinued for unloading purposes.

Q. For our purposes, were eliminated?

A. That is right.

Exam. Brown: Talk louder, please.

Q. Then the capacity of one track would be 30 cars, according to Mr. Hampton's testimony, is that correct?

A. Not necessarily so. I suppose you are taking an average on that now, but understand, that is a move made to facilitate the operations in and out of the yard, and by the same way we took it out, we put it back; the possibilities of the yard are still 500 cars.

Q. As I understand your testimony, Mr. Webb, at least four tracks were rendered unavailable for team-track delivery at this time.

A. I did not say that, sir. It may be right. I said it was four tracks affected, my recollection, by the shortening of the delivery space.

Q. And if each track accommodated approximately 17 cars, four tracks would equal 68 cars?

A. That would be right, yes. That calculation would be right.

[fol. 1425] Exam. Brown: Where does that leave the record? The witness testifies that the capacity is approximately 500 cars. You compute 68 cars as a total number of cars which would be affected by this change. Now, the prior record showed 510 cars, and if you subtract 68 from that, you will have much less than 500. Are you going to leave the record like this? It is very unsatisfactory to me.

Mr. Fitzgerald: Well, Mr. Examiner, I am not prepared to say that I can produce a correct answer from this witness. He has indicated throughout that it is extremely difficult to get a precise answer from him. I am content with that state of the record from this witness.

Exam. Brown: Well now, let it be understood at this time that this is a special proceeding and it is encumbent upon this Commission to develop the facts as well as to listen to facts from the parties. I think it should be in the record, and I think we should have it, and I do not see why we cannot have it.

Mr. Miller: Do you want to go off the record to see if we can decide on the capacity?

Exam. Brown: All right, we are off the record.

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(Discussion off the record.)

Mr. Miller: Mr. Examiner, in a discussion off the record, the respondents and protestants agreed to disagree. It is our position that there is a capacity of 450 cars in the [fol. 1426] team tracks at the produce terminal in Philadelphia. Protestants stand on the testimony of Mr. Ward yesterday that the capacity is 400 cars. I submit that the issues of this proceeding are not concerned with the difference.

Exam. Brown: In other words, should it be stipulated that the capacity is between 400 and 450 cars?

Mr. Miller: Yes, sir.

Exam. Brown: So far as you are concerned?

Mr. Miller: So far as we are concerned.

Exam. Brown: How about the protestants?

Mr. Fitzgerald: All right, I will agree to that.

Exam. Brown: All right. Go ahead then.

By Mr. Fitzgerald:

Q. Now, Mr. Webb, I show you a paper which I will ask the stenographer to mark for identification——

Exam. Brown: Are you going to put that in as an exhibit?

Mr. Fitzgerald: No, sir.

Exam. Brown: Then you need not mark it.

By Mr. Fitzgerald: (Continuing)

Q. ——and ask you if you are familiar with this sheet, if you know what this sheet is?

A. Well, I never saw it before, but I see from the heading what it is.

Q. Will you explain to the Examiner what it is?

A. Well, it is a piece of paper headed "Report by the Philadelphia Produce Terminal, Delaware and Oregon Avenue, Philadelphia, commodity."

[fol. 1427] Q. Now, to whom is that report made, Mr. Webb?

A. I do not know.

Q. You know, do you not, that the Pennsylvania Produce Terminal each day furnishes to the Department of Agri-

culture of the United States Government a report of the number of cars which arrive at the terminal, the number of cars unloaded and the number of cars withdrawn and the number of cars held?

A. I do know that, yes, sir.

Q. And this report that you have in your hand now is a copy of such a report, is it not?

A. I do not know that.

Q. You say that it is not?

A. I say that I never saw the report before.

Q. I am not concerned with whether you ever saw that particular report before.

A. Then why do you want me to tell you what it is used for?

Q. Do you deny that that is a report prepared by the Pennsylvania Produce Terminal?

A. No, I do not know anything about this report.

Mr. Fitzgerald: May I go off the record a moment?

Exam. Brown: Why do you wish to go off the record?

Mr. Fitzgerald: I feel that the witness is being difficult here about a matter which will only require me to bring another witness on to show what this figure is. It is an official figure and from it I wish to demonstrate the [fol. 1428] capacity of the yard with reference to the actual existence of cars as of that particular date.

Exam. Brown: Well, the witness says that he does not know what this is and is not prepared to testify with respect to it. I think it would be appropriate for you to put that in on rebuttal, if you wish.

Mr. Fitzgerald: Yes, I will not attempt any further questions on this line of this witness.

By Mr. Fitzgerald:

Q. Now, Mr. Webb, you have stated that your railroad refused to permit the petitioners in this case as respects the Pennsylvania Produce Terminal permission to unload their own cars at the terminal. That is correct, isn't it?

A. Well, I do not know what form this refusal was given in. I know that is our position.

Q. I did not quite understand on your direct examination

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what you gave as the reason for that refusal or that position, as you stated.

A. Well, I think I gave three reasons on that one. It was a public facility, and that we were not assured that the interests of the entire public could be protected. There was another factor of a possibility of having to run a dual operation, one to be handled by the trade and the other by the railroad, and the third——

Q. I did not hear that. Will you explain what you meant [fol. 1429] by that.

A. Well, if the trade portion did not take care of all the public, we might have to have a facility to take care of what the Association did not take care of. And the third one was the labor question.

Q. And the labor question specifically?

A. The labor question is very prominent.

Q. What was the labor question, specifically?

A. That this work has been done by our men for many years and with no change in operations, physical operations, to take that work away from them would, according to our expectation, be followed by immediate reaction.

Q. Now, when you say that the unloading by the trade might not supply the public, what did you mean?

A. I mean anybody who wants to take delivery at the produce terminal.

Q. Who wants to take delivery at the produce terminal who is not a member of the trade?

A. I would not know, sir. I would not know who your members are as related to the general receivers of freight in Philadelphia.

Q. When you say the trade, whom do you refer to?

A. I mean the Association.

Q. It is a fact, isn't it, that only the wholesale produce trade in Philadelphia uses the Pennsylvania Produce Ter- [fol. 1430] minal and the platforms we are referring to?

A. I do not know who the members of the Association are.

Q. That was not my question. Will you answer the question?

A. Well, I would like the question read, please.

Mr. Miller: Mr. Fitzgerald, if you are going to play on

words that way, I will object to the question. Mr. Examiner, counsel is using the word "trade" in one sense and the witness is using "trade" in another sense.

Mr. Fitzgerald: I quite agree with Mr. Miller that there is a great deal of play on words here, but it is not counsel who is doing it. I am attempting to have this record show what the witness means.

Exam. Brown: Read the question back.

(The reporter read the following question):

"It is a fact, isn't it, that only the wholesale produce trade in Philadelphia uses the Pennsylvania Produce Terminal and the platforms we are referring to?"

Exam. Brown: Now, if you will be a little more specific with your question, when you refer to the trade, who do you mean?

By Mr. Fitzgerald:

Q. Mr. Webb, when I refer to the Philadelphia wholesale trade, I mean those persons in Philadelphia who are customarily engaged in the wholesale fruit and vegetable business.

A. I understand that, yes, sir.

[fol. 1431] Q. Now, will you answer the question?

A. Well, I think that if I understand your question correctly, that my answer is that there may be members of the trade so-called that are not members of the Association. I think, as a matter of fact, that is true.

Q. And it is your position, then, that without making any investigation, without having testified that such was the fact, you have refused to consider any means of these people in the trade performing their unloading service because you are afraid that some members of the trade who were not members of an Association would be deprived of that right? Is that correct?

A. Well, all I have said is that the railroad has to—this is a public facility, and the railroad has to maintain that facility for the general use of the trade, now using your definition, of all those who receive fruits and vegetables in Philadelphia.

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Q. Now, it is a fact, isn't it, Mr. Webb, that at Baltimore the trade performs its own unloading?

A. That is right.

Q. And nevertheless it is a public facility?

A. But not the trade such as we are talking about. There is a facility, meaning now the general receivers of freight —there are certain specific receivers of freight there that have leased space on the platform, and they unload [fol. 1432] their traffic on the platform, although my recollection is that it is more likely to be part cars than what it is assorted cars, because their space is very limited, and the practice is for anybody else who does not have space on that platform in Baltimore has to conduct his activities in New York.

Of course, those people rent that space. It is assigned to them in mutual agreement between the railroad and the trade.

Q. Now, you have used another term that I want to be clear on. You said "freight in Baltimore." We are referring now to——

A. Perishable traffic.

Q. ——perishable fruit and produce at the Pennsylvania Produce Terminal in Baltimore.

A. That is what I am referring to, yes.

Q. And there, I take it, at least 90 percent of the fresh fruit and produce at that terminal is unloaded by the consignees themselves, is that correct?

A. No. I could not agree to that, to a figure of that kind. I do not know what the figures are, but the majority of the traffic moves right from the cars in the yard, and the platform is, to an extent, and again I cannot give you the percentage, used for display purposes, although a man may bring his freight in on there for sale if he has the room and there is facility to do it.

Q. And if he brings it into the platform, it is unloaded by his employees and not by the railroads?

[fol. 1433] A. That is right.

Q. But in Philadelphia you had refused to consider the same sort of proposal by the members of the Philadelphia wholesale trade?

A. I do not like that word "refusal." Perhaps it amounts

to the same thing, but there has been no arrangement worked out that the railroad feels is mutually protective of everybody's interests.

Q. Has any such arrangement been proposed to the railroad?

A. Nothing that they felt would cover the situation.

Q. Has any specific counter proposal been made by the railroad as to how the interests of members of the trade could be safeguarded?

A. No, sir, because we haven't been able to see how we could safeguard the interests of the trade as a whole with any kind of a proposition such as was suggested. Neither do I understand that this proposition of Philadelphia is definitely closed. There are avenues in Philadelphia—— you have got a contact committee between the trade and the railroad that is always open for discussion of a problem of this kind.

Q. I think the record already shows the extent of those discussions and the result. The fact is, then, that the railroad has and does insist that it perform the unloading service at Philadelphia and that no consignee be permitted to do so.

[fol. 1434] A. Well, that is again a play on words, but it perhaps covers the situation. The railroad is unloading.

Mr. Fitzgerald: I would like to say, Mr. Examiner, that if I am playing on words here, it is entirely unintentional, and I want the record to show that I am attempting to be as specific as I can be.

Exam. Brown: Proceed.

By Mr. Fitzgerald:

Q. I believe you also testified, Mr. Webb, that there had been proposals made to lease facilities at the Pennsylvania Produce Terminal and that the railroad had rejected those proposals; is that correct?

A. Well, isn't that the same question you asked me before, and I have been trying to answer for you?

Q. This question has to do with leasing facilities at the Produce Terminal.

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Mr. Miller: Mr. Examiner, I should like to interpose an objection to any further controversy along this line. The witness has stated all he knows on this subject as to the reasons why the request of the trade association in Philadelphia was denied. That is his complete story. That is all he can possibly say about it. He can only repeat what he said before.

Mr. Goldsmith: I understood that was as to the unloading only, Mr. Miller.

Mr. Fitzgerald: This is a new line entirely.

[fol. 1435] Mr. Miller: He specifically referred to the proposal to lease. He said that it would be impossible.

Mr. Fitzgerald: As to Mr. Miller's remarks that this witness's knowledge has been exhausted, I submit that as manager of the stations and motor service of the staff of the vice-president for this entire system, that Mr. Webb's knowledge, the surface of his knowledge of this subject, has not been scratched, and furthermore, whatever may have been elicited on direct examination, this is cross examination as to which, I believe, the Examiner will allow reasonable latitude.

Exam. Brown: I have allowed very reasonable latitude thus far.

Mr. Fitzgerald: I have no complaints, Mr. Examiner, whatever. I think Mr. Miller has failed to consider that I am now approaching a new line.

Exam. Brown: Go ahead with your line. I think this witness can answer it in one simple answer.

Mr. Fitzgerald: I haven't gotten a simple answer so far, Mr. Examiner.

Exam. Brown: I said I think he can answer with one simple answer.

The Witness: May I have the question?

Exam. Brown: You restate your question. I am not going to go back to read from the record. Restate your question.

[fol. 1436] By Mr. Fitzgerald:

Q. I believe you testified on direct examination, Mr. Webb, that the Pennsylvania Railroad had refused to consider and act favorably upon propositions submitted by the trade

in Philadelphia to lease any facilities at the Pennsylvania Produce Terminal?

A. No, sir, I never said that the Pennsylvania refused to consider. I think I did say that the railroad had not agreed to lease these facilities to the trade, so they could do their own unloading. That is my recollection.

Q. Your refusal, then, to lease the facilities to them was for the purpose of denying them the privilege of unloading; is that your answer?

A. That is not my answer.

Q. Well, then, I do not understand your explanation, Mr. Webb, and I wish you would explain it more fully.

A. Well, the Pennsylvania Railroad did not agree to lease the facilities to the Association in Philadelphia for the purpose of having them operate and unload the cars because this was a public facility and they are not satisfied that they can fulfill their obligations to the public in general, under the terms of the lease such as you propose.

Q. Now, Mr. Webb, on direct examination, my recollection of your testimony in that respect was that you had to consider other costs and other factors which made it impossible for you to agree to lease facilities to these people. [fol. 1437] A. Well, if I said anything like that, I certainly do not recall it. There are other factors for consideration, but I gave three reasons why we did not agree to a lease and the three were—I cited them first in my testimony, and I cited them to you a few moments ago—they started with this question of public facility and wound up with the labor question.

Exam. Brown: Can't we leave it this way, that the Pennsylvania Railroad thus far has failed or refused to lease platform space to the trade in Philadelphia?

Mr. Fitzgerald: Mr. Examiner, there were two specific questions, and they were not related until this witness, at this moment, attempted to relate them. One was a proposal that the receivers be permitted to perform their own unloading service. The other was a proposal that they be permitted to lease space. This witness now, for the first time, to my knowledge, in this testimony has attempted to

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join the two and said that his consideration of them was inseparable.

Exam. Brown: Now, I asked the question of counsel, I would like to have an answer to it, if I might.

Read it back, please.

(The reporter read the Examiner's question.)

Exam. Brown: That is a simple question.

Mr. Fitzgerald: Yes, Mr. Examiner, I think I can agree to that.

Exam. Brown: I am sure Mr. Miller will agree to that.

[fol. 1438] Mr. Miller: Certainly.

By Mr. Fitzgerald:

Q. And it is also true, is it not, that you have and continue to refuse to grant the trade permission to unload irrespective of any lease facilities?

A. That is correct; under our interpretation of the tariff we are required to unload.

Q. Now, Mr. Webb, you are familiar with the facilities at B platform in Philadelphia, I take it?

A. That is right.

Q. You are also familiar with the facilities at the Pennsylvania Produce Terminal in Baltimore, I take it?

A. That is right.

Q. Will you tell me from a physical standpoint whether there are any essential differences in those facilities?

A. I do not recognize any such except size.

Q. They are both platforms of great length with sidings, with rolling doors between columns, along the sidings?

A. We can agree that they are facilities of somewhat the same construction.

Q. Now, you have characterized Philadelphia facilities as public facilities which must remain such, is that correct?

A. That is our opinion, yes, sir.

Q. And you have characterized Baltimore facilities, as referred to, as private facilities?

A. Lease facilities.

[fol. 1439] Q. It is true, then, that the only distinction that you make there between them is that in one case you have

permitted consignees to lease facilities and in the other you have not?

A. That is right. In the case of the lease facilities, there are no open facilities for the unloading of perishable traffic at Baltimore. There has never been in recent years, at least, and there is in Philadelphia.

Mr. Fitzgerald: Now, I am sorry, I did not understand that answer.

Exam. Brown: Read it.

(The reporter read the last answer.)

By Mr. Fitzgerald:

Q. Now, it is true, isn't it, Mr. Webb, that a part of the platform at Baltimore is open?

A. Not to my knowledge.

Q. You say that it is not?

A. I think it is not, yes, sir. I certainly think it is not, because we are not unloading anything there.

Q. Are you familiar with the tariff applicable to unloading facilities at Baltimore?

A. Yes, sir.

Q. It is correct, isn't it, that that tariff——

Mr. Fitzgerald: Should I cite it?

Exam. Brown: Yes, cite it by the ICC number and the tariff number.

Mr. Fitzgerald: ICC 2927; tariff 1233F.

[fol. 1440] Exam. Brown: Agency tariff or Pennsylvania Railroad tariff?

Mr. Fitzgerald: It is Pennsylvania Railroad tariff, entitled "Local and Joint Freight Tariff of Rates and Regulations governing miscellaneous services applying to stations on Pennsylvania Railroad.

By Mr. Fitzgerald:

Q. It is correct, isn't it, that under Rule 41 for Baltimore, that tariff provides that when, upon request of shipper——, and I will not quote the entire words——the carrier is called upon to unload carload freight at Pennsylvania

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Produce Terminal, a charge of 6¼ cents for 100 pounds actual weight will be assessed in addition to the rate charged for shipment.

Is that correct?

A. That is the general reading of the tariff, yes, sir. There may have been a supplement on the rates; I do not know offhand.

Q. And that rate would amount to $1.25 per ton, would it not?

A. On straight calculation.

Exam. Brown: When is the effective date of that tariff?

Mr. Fitzgerald: March 15, 1949, is the effective date of it.

Exam. Brown: You say you do not know if there has been a supplement issued to that?

The Witness: No, I do not know. I have no reason to [fol. 1441] think there is, Mr. Examiner, but I simply do not know if that is the latest tariff.

Mr. Fitzgerald: I might state for the record that I know of no such supplement.

Exam. Brown: Well, that can be checked. Go ahead.

By Mr. Fitzgerald:

Q. Now, Mr. Webb, you then hold out that you would perform unloading service at Baltimore for $1.25 a ton applicable to fruits and vegetables?

A. The rate named in the tariff.

Q. And you tell me that you perform no unloading service at the Pennsylvania Produce Terminal?

A. That is right.

Q. The consignees in Baltimore, then, perform their own unloading service at their own expense?

A. That is right.

Q. It can be concluded, I suppose then, that their rate is advantageous as compared with this rate?

A. With what rate?

Q. The rate of the tariff.

Exam. Brown: Do you understand what the question is?

The Witness: I get him now, as to whether the cost of unloading by the consignees is advantageous as related to

the tariff rate. I do not think that follows at all, sir. It is a convenience to them, and it is a practice set up over the years, and the railroad has never unloaded anything [fol. 1442] in Baltimore, although we stand ready to do it.

By Mr. Fitzgerald:

Q. At any rate, the consignees at Baltimore do not take advantage of the railroad's offering to unload their freight at $1.25 a ton?

A. That is right.

Q. Mr. Webb, are you familiar with the tariff applicable in this connection at Pittsburgh, Pennsylvania?

A. Yes, I am fairly so.

Q. Referring specifically to ICC 2905, Tariff 1472G, local freight tariff to the Pennsylvania Railroad, rules and regulations governing the handling of fresh fruits, fresh or green vegetables, and other commodities at Pennsylvania Railroad Produce Terminal, Pittsburgh, Pennsylvania, it is correct, is it not, that that tariff in item 45, of Rule 4, provides, in substance, that the company will upon request of the consignee unload carloads when billed at 10,000 pounds or more from cars to the auction house or package delivery house, for which service a charge of 6¼ cents per 100 pounds will be made, based on actual weight but not less than 10,000 pounds; that is correct, is it not, that is the tariff?

A. You are reading from the tariff. I accept what you say as correct, sure.

Q. And it is correct, also, is it not, that that tariff goes on to say that the company will, upon request of the consignee, sort packages according to grades, kinds, marks or [fol. 1443] brands for which a charge of $4.47 per car will be assessed. That is also correct?

A. No, there is something wrong about that. That rate is $4.92.

Mr. Miller: Mr. Examiner, it seems to me that we can gain nothing further from further reading of the tariff and further references to the tariff. The tariff speaks for itself. What it provides, the Pennsylvania holds itself out to perform. The witness has stated that he does not perform the service. That is the sum total of the story, I submit.

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Exam. Brown: I think it is of interest in this proceeding to know what the tariff provides. We cannot assume that a tariff provides something. It has to be in the record or proper reference to it.

Mr. Fitzgerald: I might state for the record that I understand that ex parte 168 is applicable to those rates as referred to that in that tariff. I do state that.

The Witness: The present unloading rate is $1.40 and the sorting charge is $4.92 per car.

Exam. Brown: At what point?

The Witness: At Pittsburgh.

Mr. Augello: $1.40 per ton?

The Witness: Yes.

By Mr. Fitzgerald:

Q. And that applies to all fresh fruits and vegetables? [fol. 1444] A. Everything which we are able to unload, sir.

Q. Now, at Pittsburgh, according to this tariff, the consignee does have the option of unloading at his own expense, does he not?

A. That is right.

Q. Now, Mr. Webb, it is true, is it not, to your knowledge, that some commodities commonly thought of as auction commodities, are unloaded in Philadelphia at B platform by the consignees, and in such case do not go through auction, and in such case are unloaded according to the customary practices at B platform?

A. You say unloaded by the consignees?

Mr. Fitzgerald: I may have said that inadvertently, Mr. Examiner.

Q. (Continuing) The point being that such cars are not delivered at A platform, but instead are placed alongside B platform and unloaded at B platform for sale other than through the auction?

A. Are you referring to Mr. Tredwell's cars?

Q. I am referring to citrus and other auction commodities.

Mr. Loos: If I may interrupt at this point, I think we

have a stipulation that will cover this subject, if it is agreeable to Mr. Fitzgerald.

Exam. Brown: Do you wish to go off the record and discuss it?

[fol. 1445] Mr. Fitzgerald: I should like to have an answer to this first.

Exam. Brown: All right, get your answer to the question.

The Witness: Well, frankly, with the discussion, I lost out. What is the question? I do not know what you want to know.

Mr. Fitzgerald: Well, I ask the Examiner's indulgence and ask that that question be reread.

Exam. Brown: All right.

(The reporter read the pending question.)

Mr. Miller: I submit, Mr. Examiner, that the witness is entitled to a clearer question than has as yet been given.

Exam. Brown: Off the record.

(Discussion off the record.)

Exam. Brown: All right, Mr. Loos.

Mr. Loos: I think you might take this. I hope it will be satisfactory.

It is agreed that the commodities unloaded on the A platform at Philadelphia are sorted by the carrier by sizes and brands so that each size (or sometimes two or more sizes as a group) and brand are in separate piles. These piles conform to the lines shown in the auction catalog. The commodities unloaded at the A platform include most of the citrus fruits and western deciduous fruits delivered at the Produce Terminal platforms and small quantities of asparagus and potatoes.

[fol. 1446] In the case of certain fruits, particularly grapes (which constitute a large part of the volume of western deciduous fruits) most of the arrivals contain a single brand without any variations in size and such cars require no sorting except the counting of specified numbers of packages into the several piles.

Commodities unloaded at B platform are not sorted by the carrier. These commodities include occasional cars of citrus

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fruits and western deciduous fruits and most of the asparagus and potatoes and all of the other fruits and vegetables received at the Produce Terminal platforms.

Exam. Brown: That stipulation has been agreed to by the protestants?

Mr. Loos: I think so, Mr. Examiner.

Exam. Brown: I hear no negative answer, so I assume that the protestants are agreeable to that and so stipulate.

Now, how about the respondents?

Mr. Miller: The respondents agree.

Exam. Brown: All respondents?

(No response.)

Exam. Brown: That will be considered as a stipulation then.

Mr. Fitzgerald: May I say for the record, Mr. Examiner, that inasmuch as the last paragraph of that stipulation clarifies the point to which my last two questions were directed, I withdraw those questions.

[fol. 1447] Exam. Brown: All right. Any further cross examination, Mr. Fitzgerald?

Mr. Fitzgerald: That concludes my cross examination.

Exam. Brown: You have concluded your cross examination?

Mr. Fitzgerald: Yes, sir.

Exam. Brown:

Mr. Hoffman.

By Mr. Hoffman:

Q. Mr. Webb, does carload freight consisting of fresh fruits move over the Pennsylvania lines and over the Chicago Belt line to the Chicago fruit auction?

A. I really cannot tell you whether it does or not. I really do not know.

Mr. Hoffman: No further questions.

Mr. Augello: I have a few questions.

Exam. Brown: Mr. Augello.

By Mr. Augello:

Q. Mr. Webb, I believe you testified on direct that vegetables were sold on the piers, is that correct?

A. I would not be surprised. That is my understanding generally.

Q. Do you know, for a fact, whether they are or not?

A. I have seen them sold there. I understand they are sold off the piers, too. But vegetables have to be sold somewhere, and we let the buyers enter a certain time in the morning for that purpose. I never bought any, but I know the procedure we go through to make them available.

Q. Well, were you thinking of tomatoes that you saw [fol. 1448] sold on the pier?

A. No. I just cannot get into any more detail, whether it is this or that. I said, in answer to Mr. Miller's question, I did not know, and I am not prepared to take any particular spot and tell you where we sell tomatoes or where we sell apples or where we sell grapes or anything else other than the definition given here today. Wouldn't that be satisfactory?

Q. Well, with your amendment, yes, but the way it stood before, I understood your answer to be that vegetables were sold on the pier.

A. Well, the last answer that I made to Mr. Miller was —and he asked me, I think, at Philadelphia—what is unloaded, and he may have asked sold—what is unloaded at a certain pier, and I said I did not know.

Exam. Brown: You said what?

The Witness: I did not know. I made that answer just before we adjourned.

By Mr. Augello:

Q. Were you talking about New York at that time?

A. I am talking about New York also, yes, sir.

Q. And your answer is that you do not know what vegetables are sold on the pier?

A. Put it that way, if you wish. That is okay with me.

Q. Or the percentage of vegetables?

A. Or the percentage, that is right, yes, sir.

[fol. 1449] Q. Do you have a knowledge of the percentage of the total fruits and vegetables unloaded on the pier; that is, related to vegetables alone?

A. I have no figures on that.

Q. Approximately, can you give an estimate?

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A. No, I would not approximate. I would not want to estimate; no, sir.

Q. You heard the testimony of Mr. Spangler and Mr. Volk, who testified about the unloading of thousands of cars on the piers of vegetables from the west and Florida, did you not?

A. I am not certain, but I certainly would not take objection to it.

Q. You would not take any objection to the statements that they made?

A. No, not at all; no, sir.

Q. Would you go so far as to say you subscribe to what they said?

A. Well, without knowing what they said, I could hardly subscribe to it, but if they made certain statements about the commodities they had unloaded on the piers, I would not say they were wrong because I do not know.

Q. You heard the statements that they made, that the vegetables were unloaded from the car on to the pier floor and immediately trucked from the pier to their store in Washington Market and sold there? Do you recall that statement?

[fol. 1450] A. I recall a statement of that kind being made, yes, sir.

Q. Do you also recall the statement in answer to my question whether that was the usual procedure of other consignees of vegetables, that it was? Do you recall that?

A. Well, I do not know that I heard that, no, sir.

Q. Will you tell us, for the record, approximately how many visits you have made to your piers 27, 28, 29, North River, in the past two years?

A. Oh, I would say maybe six or eight times.

Q. And at what time of the day was that?

A. Well, the last time I was down there was in the evening.

Q. What time in the evening?

A. From about 8 o'clock to 1.

Q. 8 to 1. That was the last time?

A. Yes.

Q. How about the previous time?

A. I would not know. I am all over this railroad. I have

got 1,500 stations, and I get to them as I can, and I do not keep any records for even my own reference of what hours I am at which station. These particular periods you are talking about are pretty big periods in our operations. We have got merchandise operations there as well as perishable and I am in and out just as often as I get around.

Q. You understand, of course, that vegetables are normally taken around 10 p.m. at night?

[fol. 1451] A. I have the hours here, and I saw them taking some vegetables the night I was down there, as a matter of fact, too. This is the market hours for the various kinds of freight.

Q. What time is early delivery?

A. Early delivery of the melons on eastern deciduous fruits, the last load arrives at 1:30; unloading completed at 3:20; sale at 3 a.m.

Q. That is melons and deciduous fruit?

A. Yes.

Q. I asked about vegetables. What time is the first delivery taken on vegetables?

A. Well, I am going to say that I saw it being taken at 10 p.m.

Q. That is correct.

A. That is what I thought it was.

Q. And after those vegetables are taken delivery of at 10 p.m., isn't that space used again for the placing of fruit for the auction market which is about five or six hours later?

A. Well, I can see where in certain conditions it would, yes. I really do not know whether it is or not, but I can see where it would be, because to handle this traffic we sometimes have to move so-called merchandise freight out of the way to make room for it, and we would be foolish if we could use that space and not take it.

Q. And to your knowledge, you have used that space for the second time, and in some cases, for the third time by [fol. 1452] placing dead freight during the day, is that correct?

A. No, I could not agree with that. It merely means that certain spaces that we have got assigned for dead freight, as you call it, are needed, and we have to move the dead

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freight off and put it somewhere else on the pier in order to make room for these commodities.

Q. Did you hear Mr. Pettit's testimony in the original hearing as to that?

A. No, sir, I did not hear Mr. Pettit's testimony. I read his testimony.

Q. You do not recall——

A. I will agree to anything that Mr. Pettit said as being absolutely correct.

Q. And if he said that that same space was used twice, and in some cases occasionally three times, you would agree to that?

A. You can rest assured that is right, yes, sir.

Exam. Brown: The question is whether you know or not.

The Witness: The answer is I do not know.

Exam. Brown: Let us say that and let us get ahead.

Mr. Augello: That is all.

Mr. Van Arnum: Mr. Webb, I have just one or two questions to clear up.

By Mr. Van Arnum:

Q. In your Baltimore station, how many years has it [fol. 1453] been since you leased all of the doors at the terminal?

A. Well, I have been in this eastern territory for about 14 years and it was my recollection that it has always been that way.

Q. Well, let us say within recent years hasn't it been the practice of the Pennsylvania Terminal in Baltimore to leave a certain number of doors open for those receivers who receive rail carloads on a seasonal basis?

A. I really would not know whether that is the regular practice or not.

Q. You would not know?

A. No, sir.

Q. At the present time, then, any receiver who has not obtained a lease space on a platform and receives carloads, must receive them in the yard and unload them in the yard; is that the situation today?

A. That is my understanding.

Q. That is the situation as it is today?

A. Yes.

Q. Are those spaces or those doors leased on an annual basis, a permanent basis, or term, or how?

A. Well, the rental is paid monthly, but I do not have the information about the extent of the lease, if I understand your question right, whether it is for a year, two years, or what it might be.

[fol. 1454] Q. That is right.

A. I do not know the terms of the lease.

Q. You do not know whether it is, as it used to be, for one year?

A. I do not know, but it would sound very reasonable to me because sometimes there are fluctuations and I know other situations do vary from year to year.

Q. But you do not know in this case?

A. No, I do not know.

Mr. Van Arnum: That is all.

By Mr. Matson:

Q. Mr. Webb, as manager of stations and motor service, is it your responsibility to see that the stations are operated efficiently?

A. That is my principal job, yes, sir.

Q. I understood so. Now, I believe that you were the witness in the Ex Parte 168 proceeding, were you not?

A. Yes, I was.

Q. And my recollection is that you stated that you were continually experimenting with new types of motor equipment and other facilities for the improvement of your stations?

A. Yes, sir.

Q. Now, you are familiar with the unloadings at both New York and Philadelphia, I presume?

A. Yes, sir.

[fol. 1455] Q. And what is the principal difference between the two operations?

A. The length of haul of the produce after it is put on the four-wheel trucks.

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Q. Is it longer at Philadelphia?
A. No, much shorter at Philadelphia.
Q. Shorter at Philadelphia?
A. At Philadelphia, the trucks come out of the car and the distance across the platform or to where the trucks go, where the freight is, we haven't even found it advisable to put tractors in there. But at New York, where it comes off the end of the floats and goes down on the piers, the tractors pull the trailers off the floats.
Q. What is the difference in the distances?
A. Well, I would say the distance in Philadelphia would be perhaps a minimum of 50 feet, and a minimum distance at New York would be perhaps the length of the float, plus, oh, I would say, seven or eight hundred feet, at least, to haul the freight.

Exam. Brown: That is the maximum distance?
The Witness: No, that is the minimum, sir.
Exam. Brown: You mean it would be a minimum of 700 feet from the time it left the car and the time it reached its allotted place on the floor?
The Witness: Yes.
[fol. 1456] Exam. Brown: Well, then, what would be the maximum?
The Witness: Well, the maximum could be a couple thousand feet—oh, not a couple thousand feet—fifteen hundred feet, though.
Exam. Brown: Five hundred yards?
The Witness: Yes, down off the float and up around up the pier. The piers are over 1,000 feet long after you hit them, and you have got a big bulkhead in front of that.

By Mr. Matson:

Q. Are you also familiar with the Baltimore and Ohio operations in New York and Philadelphia?
A. No, I am not familiar with them.
Q. Would you state whether the pier operation in New York would entail any different distances for the Erie or Baltimore and Ohio and New York Central than your operation does?
A. Frankly, I could not tell you, sir.

Mr. Miller: Objection—go ahead.

A. (Continuing) I said frankly I could not tell you, sir.

By Mr. Matson:

Q. And at Philadelphia, would you answer the——

Exam. Brown: Will you state that again? We had an objection over here that we were disposing of.

Mr. Matson: The witness said he did not know.

Exam. Brown: Now, I did not hear your next question, nor did Mr. Miller.

By Mr. Matson:

Q. The next question is, does the witness know with [fol. 1457] respect to the Philadelphia operations at the two terminals?

A. Well, it has been a good many years since I have been at the Baltimore and Ohio terminal. I would prefer to just say that I do not know because I do not know too much about their operations down there.

Mr. Matson: What prompts me to ask these questions is that I am completely mystified as to the reason why the New York operation of the Pennsylvania should cost so much more than the Philadelphia operation of the Pennsylvania and for the New York operation which is motorized, and contrariwise, in Philadelphia, the motorized operation of the B&O appears to be more costly than the Pennsylvania.

The Witness: Well, where are you getting your information from about the relative costs?

Mr. Matson: From the cost exhibits placed in evidence at the original hearing and at this hearing by the railroad witnesses. I am not asking any questions as to the measure of the cost. I want that understood. I am not going into that at all.

Mr. Miller: I think the record should show that there is no question before the witness at this time.

Exam. Brown: It sounded like a question to me. Didn't you ask a question? Wasn't that intended as such?

Mr. Matson: I was just stating that I was mystified.

[fol. 1458] Exam. Brown: You are just making a statement.

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Mr. Matson: Now, I would like to ask the witness a question.

By Mr. Matson:

Q. Can you explain the apparent discrepancy or mystery why there is such a situation; why does it exist?

A. Between the Pennsylvania at Philadelphia and the Pennsylvania at New York?

Q. Yes.

A. Well, pier operations are the most costly operations that you can get in the handling of traffic of any type, meaning now where freight has to be moved on and off the floats.

On our New York operation, as was testified here by Mr. Pettit, these floats go in, head in against the pier, and the little trucks have to come down over the end of the float and be taken, maybe moved right back past the float to get where they want to go, where at Philadelphia it is an operation from a track to a platform, a normal station operation. The New York operations are abnormal from the viewpoint of efficient freight.

Q. You mean New York operations are unique. There is nothing else like it in the country?

A. Well, no, I do not know of anything else. I think all the float operations are practically discontinued, certainly here on the eastern seaboard.

Q. Now, with respect to increasing the efficiency of these [fol. 1459] operations, what have you done in the last two years in either Baltimore or Philadelphia?

Mr. Miller: Objection, Mr. Examiner. The witness said the procedure was exactly the same.

Exam. Brown: I do not understand your objection.

Mr. Miller: Well, we are now going over and over again the same ground which was gone over two or three times at the preceding hearing, and this witness has stated that the description of the operation in 1947 is the description of the operation today.

Now, there is just no good purpose to be served by going over again through the detailed description that we have already covered two or three times.

Exam. Brown: The question is now what has this witness done to improve the operation?

Mr. Matson: Yes, sir.

Exam. Brown: Now, the witness has previously testified that the operations are the same, so isn't your question answered by that?

Mr. Matson: I submit, Mr. Examiner, that we have a very responsible witness from the Pennsylvania Railroad, a very high officer, whose principal duty is to increase the efficiency of these operations, and I would like to know what he has done. I assume he has done something in the last two years.

[fol. 1460] Exam. Brown: How are you going to hook that in with the issues in this proceeding?

Mr. Matson: That would come under Section 15A.

Mr. LaRoe: Isn't it answered by his statement that the operations are the same now as they were before? That would seem to indicate no change of any kind.

Mr. Goldsmith: Nothing was done.

Exam. Brown: Well, has there been any change? You can answer that without any difficulty, can't you?

The Witness: Mr. Examiner, I can answer it, yes or no, but I would ask your consideration is not asking me to answer it that way because it requires an explanation.

Exam. Brown: I will be glad to have you give the explanation. I do not think it is going to hurt the record one way or another, except as counsel states, it might have some bearing in 15A.

The Witness: I have said, and I am right, that on the perishable unloading operations they are being conducted in the same way that they were done in 1947. But that is not true of general unloading operations. The point is that while we have found no way to further mechanize the operations at piers 27, 28, for example, at pier 29 or Desbrosses Street, which is a continuation of the same operation, we have, I believe, a mechanism in the handling of equipment that is percentage-wise on a par with that of any [fol. 1461] industry or any railroad that has attempted to mechanize. We have a facility there where we receive outbound carload traffic in packages.

I will take the small packages of rubber, where, when the rubber comes in on the pier on a truck, it is placed in a small two open-end—both ends open—box about four feet

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high, and a lift truck lifts that off of the truck, the motor truck, and takes that container of rubber into the car and stows it in the car, pushes it out of the small container we use and places it in the car, making it conditional whereby one man will load an entire car of rubber which is, from my knowledge of the situation, and I try to keep up to date on that, about as far as anybody has been able to go.

Exam. Brown: That is interesting, but let us confine our discussion to fruits and vegetables.

The Witness: All right. Now, at this pier, where we unload these fruits and vegetables, and we do that the same way as we did in 1947, we place our gang planks—one man with a lift truck will place a gang plank in position, that it took two gangs of five or six men 15 or 20 minutes to place in position, say three or four years ago.

Now, my point is that we have endeavored in every way we know how to mechanize every part of our operation, and as new equipment comes on the market, we buy it, we use it, but we have found nothing that will enable us to mechanize [fol. 1462] the perishable operation beyond that which we have done now. We cannot use pallets.

Mr. Miller: Mr. Examiner, in this connection I would like to call your attention to the figures of improved efficiency which Mr. Heywood put in this record this morning, showing that very substantial improvements have been made in both operations.

Exam. Brown: Mr. Heywood's testimony will be given proper consideration.

Mr. Matson: Mr. Heywood's figures show—and I am using these figures for their relative value only; I am not attacking the measure of the charge—Mr. Heywood's figures show that the cost of unloading top-iced vegetables is now $4.11 a ton, as compared with $4.24 two years ago, which is some improvement.

Mr. Miller: I was not talking about those figures. Those are not figures as to efficiency. Those are figures as to cost. Mr. Heywood did place in the record the figures pertaining to tons handled per man hour.

Mr. Matson: Well, I am talking about these.

By Mr. Matson:

Q. Now, for unloading the same type of vegetables, the Erie cost study now shows a cost of $2.51 as compared with $2.05 two years ago, and I understand from the testimony that that is a hand truck operation.

Now, I am asking you, have you, and if not, why not, [fol. 1463] considered going back to hand truck operation in lieu of this motorized operation in New York?

A. Well, I would certainly hestitate to even recommend something of that kind because when you unload a freight by hand truck from a carfloat, you go down over the side of the float on what we call gang planks.

Q. Yes?

A. When you have a tide unusually high, you have got to put ropes on the men to hold them back. You have got to either rope the man or rope the hand truck, and if you rope the man the hand truck goes down in front of him, and unloading of any freight in volume over the side of a carfloat is a tremendously unsafe job from our point of view, and I will say very frankly we are doing everything we can to improve the safety of our men.

Q. Well, do you mean to say that you are more humane in that respect than the other railroads who have these operations on the same river within a few yards of your operation?

A. No. I know nothing about what their situation is, but I do know this, that there aren't two pier operations where your problems are identical.

Q. I guess that is enough on that point. I should like to ask you one more small question: that is about this Pittsburgh operation, where the consignees are permitted to perform their own unloading. Are they limited to team-[fol. 1464] track delivery in that, or can they unload on platforms?

A. They can unload on the platform if they so desire, but I testified that they did not seek that privilege. They wished the railroad to unload the freight for them.

Mr. Matson: Thank you; that is all.

Exam. Brown: Any further cross examination of this witness?

(No response).

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Exam. Brown: Any redirect?
Mr. Miller: No, sir.
Exam. Brown: That is all, sir; you are excused.

(Witness excused.)

Exam. Brown: Any other testimony on behalf of the protestants? I assume you are through with your case?
Mr. Miller: Yes, sir.
Mr. LaRoe: Yes, sir, I should like to call Mr. Laux, please.

Edward K. Laux was recalled and testified further as follows:

Direct examination.

By Mr. LaRoe:

Q. Mr. Laux, did you hear the testimony of Mr. Webb?
A. I did.
Q. Regarding the encouraging of team tracks in New Jersey, in lieu of the pier station service?
[fol. 1465] A. I did.
Q. In your judgment, would that operate as a convenience or inconvenience to the public at wide?
A. I think it would operate to an inconvenience to the public.
Q. In what manner?
A. For the simple reason that the vast majority of vegetables and fruits that are consumed are consumed east of the Hudson River.
Q. Is there an economic reason why the produce markets are located on the west side of Manhattan, as they are?
A. I believe there is, yes, sir. It is mainly because of the location of the markets and the consuming public.
Q. In your judgment, would the location of the markets change if the railroads should succeed in getting more of the deliveries made on the New Jersey side?
A. Definitely so. I think it would have a tendency to dislocate and scatter the markets.
Q. Assuming that the markets stayed where they are,

would a truck haul be involved to get the material over here?

A. Yes, sir.

Q. Would you describe that truck haul?

A. Well, the trucks ordinarily that handle the market freight are centered in the lower west side and, of course, to unload on the Jersey side, such as at the Henderson Street yard or Ball Ground they call it, Waldo yard, and I [fol. 1466] believe the Erie has a yard over there, too, would mean that the truck would have to leave lower Manhattan, use the ferry boat or the Holland Tunnel, and perhaps cover a distance of about three miles. Now, that may take at best about 20, 25 minutes, perhaps another half hour, to locate the car and unload the car and load his truck, and perhaps another hour and a half would be entailed to get the truck back to the market.

In other words, it may consume at least three hours, and in addition, I am sure it would cause congestion and delays.

Q. How about the yard that is said to be located at a mile and a half west of the other yard? Would that involve still more transportation?

A. It would. It probably would increase the length of time by another 15 or 20 minutes, too.

Q. Have the rather elaborate plans which the Port Authority has made with respect to the improvement of this terminal situation here, for the handling of fruits and vegetables, and which, I believe the record shows to involve a potential expenditure of 27 million dollars, assumed the continuance of the pier station service?

A. It did, yes, sir, and I think that is in line with the thoughts of, not alone the Port of New York Authority with regard to our development plans, but also the thoughts of the City of New York.

Q. Well, if the railroad should succeed in inducing the [fol. 1467] traffic to go across to New Jersey, would that not disrupt the plans of both the Port Authority and the City?

A. It certainly would.

Mr. LaRoe: That is all.

Mr. Goldsmith: Just one question, Mr. Laux.

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By Mr. Goldsmith:

Q. On the question of the time that you gave, three hours, was that under favorable traffic conditions?
A. I would say most favorable traffic conditions.
Q. Most favorable?
A. Yes.
Mr. Goldsmith: That is all I have.

Exam. Brown: Any further direct examination?
Mr. Fitzgerald: Not of this witness.
Exam. Brown: Any cross examination?
Mr. Miller: No, sir.
Exam. Brown: All right, Mr. Laux.

(Witness excused.)

Mr. LaRoe: Is Mr. Papa here? Will you take the stand, Mr. Papa, briefly?

Joseph G. Papa was recalled and testified further as follows:

Direct examination.

By Mr. LaRoe:

Q. Did you hear the testimony of Mr. Webb regarding the discouraging of pier station service and the encouraging of team-track deliveries on the New Jersey side of the [fol. 1468] Harbor?
A. I certainly did.
Q. In your opinion, would that operate to the convenience or inconvenience of the public, and in what way?
A. That would operate to the inconvenience of the public.
Q. Explain.
A. The operation, as it is now, provides that the trucks take the merchandise from the New York side and deliver it on the New York side, where most of it is delivered. In addition to that, if they are compelled to take delivery over in New Jersey, there is the inherent loss of time as a result of delays at ferries and at tunnels, and overtime payments to the employees because of that loss of time.

In addition to that, the railroads in New Jersey perform no services at all for them. We must go in and get the stuff ourselves right out of the cars.

Q. If the markets stay where they are, that would involve bringing the freight back to these markets, would it not?

A. It most certainly would. In addition to that, it would maintain that employment which we saw jeopardized when this order first went into effect, and we permitted——

Q. Would there be any tendency for——

A. Let me finish that.

Mr. Smith: The witness wants to finish his answer.

Mr. LaRoe: I am sorry.

[fol. 1469] Exam. Brown: Read what you have of the witness's answer.

(The reporter read the witness's last answer.)

A. (Continuing) We permitted these receivers to make their pickups in New Jersey in order to keep them in business and avoid paying that additional charge, but when we discovered the objectives of the railroads in moving this whole business over into New Jersey, we could not for a moment tolerate that any longer because what has not been injected in this whole proceeding here is this human element. All along here we have been talking about commodities; we have not been talking about human beings at all.

Exam. Brown: When you say you could not tolerate it any longer, what did you mean by that?

The Witness: I mean that your contracts provide that we, from time to time, may make certain rules or regulations governing the physical movement of these commodities wherein the union might feel that the employment security of his member is in jeopardy.

Exam. Brown: You are speaking for your union now when you said you could not tolerate it any longer?

The Witness: Yes, because our members were unemployed.

Exam. Brown: And what did you do when you——

The Witness: We met with the receivers and told them that effective a certain date we would not pick up any merchandise in New Jersey.

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[fol. 1470] Exam. Brown: All right.

The Witness: That is what we did.

By Mr. LaRoe:

Q. Is there any tendency that you notice now for the people on the New York side who handle this stuff to threaten to go over to New Jersey or to actually go over there?

A. Those poor people, these receivers with these unloading charges, there is a constant stream of telephone calls and personal visits to my office to talk to me directly, constantly pleading to be permitted to go back and pick up the merchandise in New Jersey in order to avoid paying this additional charge, and if they continue to pay this additional charge they are out of business, and some have already gone out of business.

Q. Have you any illustration of that?

A. Yes. I want to show you here—just a few minutes ago or a half an hour ago I telephoned the office. I had some message given to me over the phone. In addition to that, I was told there is a telegram here addressed to me as president of Local 202 from Mark Yeckes of the firm of Yeckes Eichenbaum, and this is only one of the many such requests, and pleas, either by phone or by personal visits. I asked that that be sent over, and Mr. Michael Murray, our business agent, who supervises the purveyors, brought it to me. He is here now.

It says: "It is imperative to the life of our business to change our present method of operating. Unloading charges on Penn, B&O, and Erie piers in New York now cost us approximately two thousand dollars per week. We must [fol. 1471] start unloading and riding from Jersey side as quickly as possible in order survive. We must have and request your immediate cooperation."

And it is signed Mark Yeckes, of the firm of Yeckes Eichenbaum.

Mr. Examiner and gentlemen, that is one of our largest companies, employing about 150 of our people from office workers all the way down the line to all those I mentioned yesterday.

Mr. LaRoe: That is all I have.

Exam. Brown: Take the stand, Mr. Ward.
Mr. Fitzgerald: Mr. Ward, you may be seated; you have been sworn.

[fol. 1473] D. W. Ward was recalled and testified further as follows:

Direct examination.

By Mr. Fitzgerald:

Q. Mr. Ward, you were present during Mr. Webb's testimony on direct?

A. Yes, sir.

Q. And you heard him testify to the effect that no one in Philadelphia prior to November 1, 1948, had unloaded his own commodities with his own labor at B platform except that Mr. Tredwell might have unloaded from one to two cars per month. I believe that is a fair summary of his testimony. Did you hear him so testify?

A. That was my understanding of his testimony.

Q. Now, you have testified on direct, Mr. Ward, that you have an intimate and long-standing acquaintance with and knowledge of the operations at the Pennsylvania Produce Terminal; is that correct?

A. That is right.

Q. How often are you present at the Pennsylvania Produce Terminal?

A. I am at the Produce Terminal each day.

Q. And during the past two years, have you had occasion to be there each day on an average, each business day, on an average?

A. That is right.

[fol. 1474] Q. And during the past two years, have you had occasion to observe the operations on B platform with particular reference to Mr. Tredwell's operations in unloading his own potatoes?

A. During each of those days I have made observations on the platforms and I have, during that time, acquainted myself with Mr. Tredwell's operation.

Q. To your knowledge, how many cars each week does Mr. Tredwell or did Mr. Tredwell, prior to November 1,

By Mr. Augello:

Q. Mr. Papa, do you know what the total unloads of fruits and vegetables on Pennsylvania piers for the period November 1, 1947, to November 1, 1948, were? Have you got those figures with you?

A. Yes, I have.

Q. Have you got a breakdown between fruits and vegetables.

A. Yes.

Q. Will you give us the fruit first?

A. November, 1947?

Q. To November, 1948.

Mr. LaRoe: Just the total.

A. Fruit, 16,023.

Q. 16,023, and what is the total of the vegetables during the same period?

[fol. 1472] A. 15,356.

Q. 15,356. So that vegetables represent approximately about 50 percent of the total unloads at Pennsylvania piers 27, 28 and 29?

A. Yes.

Mr. Augello: That is all.

Mr. Miller: Your figures include 13 months, do they not, Mr. Papa?

The Witness: 13 months, November to November.

Exam. Brown: Any further direct examination of Mr. Papa?

(No response)

Exam. Brown: Any cross examination?

Mr. Miller: No, indeed.

Mr. Smith: No questions, sir.

Exam. Brown: That is all.

(Witness excused).

Exam. Brown: We will have a short recess.

(A short recess was taken.)

Mr. Fitzgerald: Mr. Examiner, I wish to recall Mr. Ward briefly.

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1948, unload at B platform with his own labor or at his own expense?

A. To the best of my knowledge Mr. Tredwell unloaded on an average of five to six cars per week during the potato season, which would be starting about August, when the western potatoes came in, carrying through to the conclusion of the Maine deal.

Q. To your knowledge, during that time, did any other receivers of potatoes in Philadelphia make use of the same facilities in a similar manner?

A. There were other receivers who made use of the same facilities, but not to the extent that Mr. Tredwell did.

Q. Will you name such receivers who, to your knowledge, did so use the facilities?

A. From my observation, I have seen receivers such as Dan Storie, I. Kallish, I. Klein. They are the ones that I can testify to now.

Q. Did you ever observe Westcott & Company?

A. Yes, that is another one that I forgot to mention.

[fol. 1475] Q. And I believe Mr. Sherman is the principal of that concern?

A. That is correct.

Q. I understand from your testimony that these men you have named use this facility to a much lesser extent than did Mr. Tredwell?

A. That is correct.

Q. Now, Mr. Ward, directing your attention to that part of Mr. Webb's testimony in which he referred to the facilities of team track adjacent to the Pennsylvania Produce Terminal, do you know whether daily reports are made, and, if so, by whom, covering the cars arriving at, unloaded at, and held at the Pennsylvania Produce Terminal?

A. I do.

Q. Will you explain?

A. Daily report of track arrivals and track holdings and unloads at the Pennsylvania Produce Terminal's facilities is made by the agent at the Pennsylvania Produce Terminal and turned over each morning to the United States Department of Agriculture for their use in dissemination of figures as to total receipts in Philadelphia.

Q. Does a copy of that daily report come into your possession and, if so, how?

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A. A copy of the daily report comes into my possession through the office of the United States Department of Agriculture. It is picked up from the Department of Agriculture's office and the information contained thereon is phoned [fols. 1476-1612] to receivers of our association after the market has opened.

[fol. 1613] Proceedings of June 4, 1951

Statement by Examiner Walsh

Exam. Walsh: By notice of November 16th, 1950, specifically assigning the proceeding for further hearing at this time and place, the Respondents were directed to prepare in writing the evidence specified in the notice of October 10, 1950, and to furnish copies thereof to counsel for Protestants and to the Commission, not later than April 16, 1950, and Protestants were directed to prepare in writing their rebuttal of Respondents' evidence and such further evidence as they may deem appropriate and to furnish copies thereof to the counsel for Respondents and to the Commission not later than May 16, 1951.

In this proceeding by schedules to have become effective June 1, 1947, respondents proposed to establish charges for unloading carload shipments of fruits and vegetables at New York, N. Y., and Philadelphia, Pennsylvania. Upon protests by numerous parties, including the Port of New York Authority, operation of the schedules was suspended. Hearings were held and the parties were heard in oral argument and reargument.

[fol. 1614] No proposed report was served. In its report of October 4, 1948—that was a final report—the Commission found the proposed charges just and reasonable and vacated the Order of Suspension and discontinued the proceeding.

The proposed unloading charges as subsequently increased became effective November 1, 1948.

Upon further consideration of the record in this proceeding and upon consideration of numerous petitions for reopening and reconsideration, the proceeding was reopened for rehearing.

Hearings were held and the proposed report on rehearing was on June 5, 1950, served on the parties.

Exceptions to the proposed report were filed and the parties were heard in oral argument.

By notice dated October 10, 1950, the Commission, upon further consideration of the record in this proceeding and upon it appearing that the record was deficient in respect of certain evidence which seemed to be important, assigned the proceeding for further hearing for the introduction of such evidence, to which we have earlier referred.

Is that an outline or a resume of the proceeding up to now?

Mr. LaRoe: That is a correct resume of the proceeding up to now. The only thing that I would add will be added later as to specifically what information the Commission did call for, because that will prove to be important as the case develops.

Exam. Walsh: Is that statement agreeable to respondents?

[fol. 1615] Mr. Smith: It sounded correct to me.

E. A. Hodkinson was recalled, having previously been sworn, and testified as follows:

Redirect examination.

By Mr. Smith:

Q. Please state your name and business address.

A. E. A. Hodkinson, 1 Park Avenue, New York 16, New York.

Q. Have you distributed to the Commission and all parties prepared testimony and certain exhibits referred to [fol. 1616] therein?

A. Yes, I have.

Q. Will you proceed to identify your exhibits so they may be given numbers for identification?

Exam. Walsh: The first exhibit will be No. 136.

The Witness: Exhibit 136 is supplemental to Exhibit *136*. It is headed "Fresh Fruits and Vegetables not Frozen, comparison of Revenue Car Freight Terminated, U. S. versus Eastern District."

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(Respondents' Exhibit No. 136, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 137 is a single page exhibit, a statement showing the number of carloads of fresh fruits and vegetables terminated in the United States, and the Eastern District, respectively, for the years 1947-48 and 1949.

Exam. Walsh: That will be 137 for identification.

(Respondents' Exhibit No. 137, Witness Hodkinson, was marked for identification.)

The Witness: 138 is a statement showing number of carloads of fresh fruits and vegetables terminated at New York and Philadelphia, respectively, for the years 1947, 1948, and 1949.

(Respondents' Exhibit No. 138, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 139 is a one-page exhibit, supplemental to Exhibit 114. That shows at the top right-hand corner of the exhibit, being a statement showing the railroad and consignee unloadings for the period November 1, [fol. 1617] 1947 to August 31, 1948.

(Respondents' Exhibit No. 139, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 140 is a one-page exhibit. That was corrected. The original exhibit was corrected because of an error in the number of carloads that I have shown as to some of the commodities. I assume you all have the corrected exhibit. They are in the sets that I have distributed this morning.

This exhibit shows the unloadings of fresh fruits and fresh or green vegetables at pier stations in New York City for the first eight months of the year 1948, 1949, and 1950.

(Respondents' Exhibit No. 140, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 141 is a 24-page exhibit, supplemental to Exhibit 115, and it shows the auction prices for wholesale lots only on fresh fruits and fresh vegetables at New York City for the seasons 1949, 1950 and 1951.

(Respondents' Exhibit 141, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 142 is a three-page exhibit. This is supplemental to Exhibit 117. This exhibit shows the auction or private sales prices for wholesale lots only on fresh fruits and vegetables at Philadelphia.

(Respondents' Exhibit 142, Witness Hodkinson, was marked for identification.)

[fol. 1618] The Witness: Exhibit 143 is a three-page exhibit. It is supplemental to Exhibit 118. It shows the auction or private sales prices for wholesale lots only on fresh fruits and vegetables at Philadelphia.

(Respondents' Exhibit No. 143, Witness Hodkinson, was marked for identification.)

The Witness: Exhibit 144 is a three-page exhibit. It is supplemental to Exhibit 119 and it shows the retail range of prices for fresh vegetables at New York City.

(Respondents' Exhibit No. 144, Witness Hodkinson, was marked for identification.)

The Witness: No. 145 is supplemental to Exhibit 120. It is a three-page exhibit. It shows the retail price range for fresh fruits at New York City.

(Respondent's Exhibit No. 145, Witness Hodkinson, was marked for identification.)

Mr. Smith: Mr. Examiner, I would like to suggest that Mr. Hodkinson's testimony be copied into the record as though read and if that is agreeable I would like him to leaf through his testimony and indicate what numbers should go in for the various blanks for the exhibits.

Exam. Walsh: Very well.

The Witness: My name is E. A. Hodkinson. I am employed by the Traffic Executive Association—Eastern Railroads as Manager, Trunk Line Commerce Bureau, and I am located at One Park Avenue, New York 16, New York. [fol. 1619] I was a witness at the two prior hearings in this proceeding. I have prepared the following exhibits:

Exhibit 136 is supplemental to Exhibit No. 113 which shows as to Fresh Fruits and Vegetables, not frozen, for

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the years 1946, 1947, and 1948 the total number of cars terminated in the United States and the Eastern District, respectively, and the percentage of the United States total terminated in the Eastern District.

For convenient reference I have reproduced those percentages for the years 1946, 1947, and 1948 in the instant Exhibit and have added the figures for the year 1949, which is the latest year available.

It will be noted that as to the commodities particularly involved in this proceeding the Eastern District is holding its own. Dealing with the total fruits and vegetables shown on this Exhibit, the Eastern District terminated 51.8 per cent of the total cars terminated in the United States for the year 1948, and 49 per cent of the total cars terminated in the United States for the year 1949.

However, as to some of the principal commodities involved in this proceeding, such as Citrus Fruits, Groups 59 and 61, there was an increase in the Eastern District in 1949 over 1948. Cantaloupes and Melons remained about the same as did also Fresh Grapes. Fresh Fruits, MOS, not frozen, were slightly up, and Vegetables, fresh, not frozen, were down 1.6 percentage points. Celery and Lettuce were both up.

[fol. 1620] Exhibit 137 is a statement showing the number of carloads of fresh fruits and vegetables terminated in the United States and the Eastern District, respectively, for the years 1947, 1948, and 1949.

In this exhibit I have treated the terminations in 1947, as constituting 100 per cent and have shown the percentage of increase or decrease in the number of cars terminated in the United States and the Eastern District, respectively, in 1948 and 1949 as compared with 1947.

Dealing with all fruits and vegetables covered by the exhibit, there was a decrease of 5 per cent in the number of carloads terminated in the United States in 1948 as contrasted with the 1947 figure.

For the Eastern District the decrease was 3.7 per cent. In 1949 there was a decrease of 17.5 per cent in the carloads terminated in the United States under 1947 terminations, and for the Eastern District the decrease was 20.8 per cent 1949 versus 1947. However, as to Citrus Fruits it will be noted that for the United States there was a decrease of

16.3 per cent 1948 versus 1947, whereas for the Eastern District the decrease was only 10.4 per cent. In 1949 for the United States the decrease for citrus fruits was 39.5 per cent, whereas for the Eastern District it was only 34.6 per cent.

Vegetables, fresh, not frozen, show a decrease for the United States 1948 versus 1947 of 10.5 per cent whereas the decrease for the Eastern District was only 7.9 per cent, and [fol. 1621] 1949 the decrease for the United States was 24.6 per cent whereas for the Eastern District it was only 24.4 per cent.

Celery 1948 for the United States showed an increase of 5.4 per cent over 1947 and for the Eastern District the increase was 8.1 per cent. In 1949, for the United States there was a decrease of .7 per cent whereas for the Eastern District there was an increase of 4.2 per cent.

Coming now to New York and Philadelphia, the points involved in this proceeding, I have shown on Exhibit 138 the number of carloads of the various fruits and vegetables for the years 1947, 1948, and 1949, and have considered the 1947 receipts as constituting 100 per cent. I have then shown the percentage of increase or decrease in 1948 and 1949 versus 1947. In 1948 the decrease at New York was 7.6 per cent on all fruits and vegetables and in 1949, 19 per cent. At Philadelphia there was a slight increase of .3 per cent 1948 versus 1947, and a decrease of 8.9 per cent 1949 versus 1947.

Dealing more specifically with the commodities involved in this proceeding, as to citrus fruit for 1948 at New —— there was an increase of 10.7 per cent over the 1947 receipts, this despite the fact that there was a decrease in the number of carloads of citrus fruits terminated in both the United States and the Eastern District in 1948 as compared with 1947. In 1949 there was a decrease of 14.1 per cent in the carloads of citrus fruits terminated in New York as con- [fol. 1622] trasted with a decrease of 39.5 per cent for the United States as a whole and 34.6 per cent for the Eastern District.

At Philadelphia the carloads of Citrus Fruit terminated in the year 1948 were 10.8 per cent in excess of the cars terminated in 1947 as contrasted with a decrease of 16.3 per

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cent for the United States and 10.4 per cent for the Eastern District.

In 1949 the carloads of Citrus Fruit terminated in Philadelphia were 12 per cent below the carloads terminated in 1947. However, for the same year 1949 versus 1947 the decrease for the United States was 39.5 per cent and for the Eastern District 34.6 per cent.

Exhibit 139 is supplemental to Exhibit No. 114. For convenient record I have reproduced the figures in that exhibit showing receipts at New York and Philadelphia, November 1, 1947 to August 31, 1948, and November 1, 1948 to August 31, 1949.

In the present exhibit I have added the figures for the period November 1, 1949 to August 31, 1950.

At New York for the period November 1, 1948 to August 31, 1949, 42,216 cars, constituting 63 per cent of the total rail receipts were unloaded by rail carriers. For the period November 1, 1949 to August 31, 1950, the ratio is practically the same, 34,114 cars, constituting 62.8 per cent of the total rail receipts, were unloaded by rail carriers.

At Philadelphia, 30.3 per cent of the total receipts were [fol. 1623] unloaded by rail carriers during the period November 1, 1948 to August 31, 1949, while for the period November 1, 1949 to August 31, 1950, 7,763 cars, constituting 26.7 per cent of the total rail receipts, were unloaded at Philadelphia by the rail carriers.

Exhibit 140 shows carloads of fresh fruits and vegetables unloaded at pier stations in New York City for the first eight (8) months of the years 1948, 1949, and 1950.

This Exhibit also shows the number of carlot equivalents of citrus fruits received by boat in New York City November 1, 1949 to August 31, 1950. There were no boat receipts subsequent to June 1950.

Exhibit 141 supplements Exhibit No. 115 and shows auction prices (for wholesale lots only) for fresh fruits and fresh vegetables at New York City for the part of the seasons of 1949, 1950 and 1951.

In common with the similar Exhibit filed at the prior hearing, No. 115, this present Exhibit shows the wide range of auction prices from day to day, week to week, and month to month.

As examples, Page 7 (which covers Grapefruit) shows

prices on California Grapefruit ranging from a low of $2.40 per box on July 5, 1950, to a high of $9.00 per box on July 26, 1950, a difference of $6.60 per box of approximately 90 pounds, which is equivalent to 7.3 cents per pound. The unloading charge is less than a mill per pound.

[fol. 1624] Page 16 covers oranges and shows a range of $3.00 to $8.00 per box.

Page 9 covers lemons and shows a range from $2.00 to $9.50 per box.

Page 4 covers carrots and shows as to Texas receipts a range from $2.50 to $5.75, January 1950, and from $4.00 to $6.00 January 1951.

Prices for California Carrots are shown for July 1950, and the range was from $1.50 to $7.00 per box. Similar ranges obtained as to other fruits and vegetables, and as I stated previously, there was a wide range of prices on the same day. Take Texas Carrots again, Page 4, January 23, 1950; low $2.50, high $5.75 per box.

Ranges over $1.00 per box or per unit generally prevailed as to the commodities covered by this Exhibit.

Exhibit 142 supplements Exhibit No. 117 and shows auction or private sales prices (for wholesale lots only) on fresh fruits and fresh vegetables at Philadelphia in June 9th to 15th, 1950. This exhibit also shows range in prices for the commodities listed therein.

Exhibit 143 supplements exhibit No. 118. It is similar to that exhibit and the exhibit I have just dealt*h* with, since it also shows price ranges at Philadelphia. It covers the period August 9th to 15th, 1950.

Exhibit 144 supplements Exhibit No. 119. It shows the retail price range on fresh vegetables at New York City for [fol. 1625] the year 1950, and for January, February, and March 1951.

In compiling this statement, we used the second weekly release for each month. This exhibit shows a range in prices far in excess of the unloading charge. As examples:

Lima Beans—

Low 9 cents; high 35 cents per pound in 1950.

Low 19 cents per pound; high 35¢ per pound 1951.

The unloading charge for top iced vegetables is 1.3 mills per pound.

Carrots—

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Low 7½ cents; high 17 cents per bunch ¾ to 1¼ pounds in 1950.

Low 9½ cents; high 19 cents per bunch in 1951.

The unloading charge is 1.3 mills per pound.

Lettuce—

1950—Low 7 cents; high 29 cents per head.

1951—Low 10 cents; high 29 cents per head.

The unloading charge would be about 2.6 mills per head.

Similar ranges prevailed as to other vegetables, such as cucumbers, peas, peppers, tomatoes.

Exhibit 145 supplements Exhibit No. 120. It is similar to the exhibit I have just introduced, except that it deals with fresh fruits.

Here again there was a wide range in retail prices. [fol. 1626] Grapefruit ranged from 7 cents to 19 cents per pound in 1950, and from 7 cents to 15 cents in 1951. The unloading charge is less than a mill per pound.

Cantaloupes ranged from 10 to 29 cents per pound in 1950. The unloading charge is 1.3 mills per pound.

Lemons ranged from 13 cents to 39 cents per pound in 1950 and from 15 to 28 cents in 1951. The unloading charge is 1.3 mills per pound.

Oranges, California, ranged from 49 cents to $1.00 for five (5) pounds in 1950, and from 50 cents to 95 cents in 1951. The unloading charge would be less than half a cent.

Oranges, Florida, ranged from 33 cents to 65 cents for five (5) pounds in 1950, and from 35 cents to 65 cents in 1951.

The unloading charge would be less than half a cent for five (5) pounds.

Mr. Smith: That completes Mr. Hodkinson's testimony, Mr. Examiner.

Exam. Walsh: Cross examination.

Mr. LaRoe: No questions.

Exam. Walsh: Any questions of this witness in cross examination?

Mr. Wells: I have a few, Mr. Examiner.

Exam. Walsh: Mr. Wells.

Recross-examination.

By Mr. Wells:

Q. Mr. Hodkinson, will you turn, please, to page 7 of [fol. 1627] your exhibit No. 141? What is the significance of the fact that you show the high and the low prices for particular dates and do not show averages?

A. I haven't shown any average price anywhere, Mr. Wells, and for a matter of quick viewing I underlined the low price in both columns and the lowest low price, and the lowest high price in each column.

Q. You do not anywhere in the exhibit show what were the averages on particular dates or particular weeks, do you?

A. No, sir.

Q. Do you know that the particular price that you do show in many instances is incorrect?

A. No, I don't know that because these are the prices that we took from the source for those prices which I have shown you and had the average prices been available either for the day or the week, I would have shown them.

Q. You don't know that the average prices are available?

A. They weren't in the publications that I looked at, but the whole purpose of this exhibit is to show the wide range between the low price and the high price. That purpose would not have been served by showing average prices.

Q. Well, specifically, Mr. Hodkinson, as an illustration, on April 5, 1950, you show a high price of $9.25 for Florida Grapefruit?

A. Yes, sir.

[fol. 1628] Q. I inquire if the high price on that date was not actually $9.45?

A. $9.25 is the price that we got from the source of the information that I have given you. If it was $9.45 in fact the variation was very much wider. It was 20 cents wider than from $2.10, to $9.25.

Q. Well, specifically the $9.45 that I suggested to you was the high price on April 4, whereas the high price on April 5, for a single box, was $8.95. Will you check that, please, and also check the other items on page 7 and the items on page 16? I refer specifically, for example, to the fact that on

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April 7, as an illustration, the low price on Bruce Boxes, Florida Oranges—there were two lower prices than the 390 you gave, one 330 and another 350. As another illustration——

A. You are going a little too fast for me, Mr. Wells, if you want me to take some notes for checking up.

So far, on page 16 you are referring to the 390 price, on April 7.

Q. That is correct.

A. As the low?

Q. That is correct.

A. Now, do you suggest that that should be what?

Q. I suggest that there are at least two items of sales on that date of individual boxes, or lines, that were less than the 390.

Mr. Miller: Mr. Wells, is it your position that this exhibit [fol. 1629] is an incorrect statement of the information shown?

Mr. Wells: Yes.

Mr. Miller: And the source, or do you mean that the source is incorrect?

Mr. Wells: I have taken the auction prices for the particular dates and they do not jive with the figures that Mr. Hodkinson has.

Mr. Miller: You don't mean that this exhibit fails to reflect accurately what is published in the New York Daily Fruit Reports?

Mr. Wells: I have not had an opportunity of checking the New York Daily Fruit Report. I do have with me, which I will be glad to make available to Mr. Hodkinson if he likes, the Florida Fruit Digest, which is the official citrus record from Florida, issued daily, showing each individual item of auction sales.

Exam. Walsh: You may do that, Mr. Wells, but the witness stated that the facts shown in this exhibit No. 141 was taken——

The Witness: —from the New York Daily Fruit Reporter; Mr. Wells is going to another source altogether in questioning those prices.

Mr. Wells: I am suggesting to him that he should verify

the figures in his exhibit, because from data which I have checked and which should show exactly the same information, it does not check.

[fol. 1630] By Mr. Wells:

Q. Are you not familiar, Mr. Hodkinson, with the fact that in an official publication of the U. S. Department of Agriculture, namely, "Market News Service on Fruits and Vegetables," and "Marketing Summary Citrus," 1949-50 Season, which is an official publication, that the weighted average auction prices by days at each of the auction markets is shown?

A. I am not familiar with that, Mr. Wells, but I am perfectly willing to accept your statement that that is the situation, that the average price is shown. I want to repeat to you, Mr. Wells, however, that the purpose of this exhibit is to show the range between the low price and the high price realized, as shown in the New York Daily Fruit Reporter.

Q. Did you observe, Mr. Hodkinson, that it so happens that, for example, on sheet 7 of your exhibit the fruit for which you show the high price in each instance was Indian River fruit from Florida?

A. That may be so.

Q. And that in each instance the fruit was either Orchid or Acme brand of D'Albora, or Nevins, or Flora Gold, and that there is no other item in those particular listings, no other brand?

A. That may be so, Mr. Wells.

Q. Would you expect the different brands and different sizes on a particular date to sell for exactly the same amount?

A. No, sir.

Mr. Wells: That is all.

[fol. 1631] Exam. Walsh: Any further cross examination of the witness?

By Mr. Kaplan:

Q. Mr. Hodkinson, on page 4 of your report——

A. Which exhibit?

Q. Of your statement. You have in the fourth para-

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graph, at New York, for the period November 1, 1949, to August 31, 1949, 42,216 cars.

Don't you wish to change that to November 1, 1948?

Mr. Smith: It looks as though you have got something there.

The Witness: Yes. That should be at New York for the period November 1st, 1948, to August 1949. You are correct, thank you.

Exam. Walsh: To August 31, 1949, instead of 1950?

The Witness: No, there is no other change. I added November for the period November 1st, to August, 1949. It should obviously be November, 1948.

Exam. Walsh: Are there any further questions?

Mr. Hoffman: Yes, sir.

By Mr. Hoffman:

Q. Looking at page 8, Mr. Hodkinson, of your exhibit 141 entitled, "Table," and under "Grapes" October 2, I see the item $3.50, Emperor. Have you found that?

A. Yes.

Q. Is that the highest price at which Emperors sold on that date?

A. I have got these as average prices, Mr. Hoffman.

Q. Then, you took all Emperors that sold on October 2, 1950, and averaged the price?

[fol. 1632] A. Yes. This sheet deals with average prices.

Q. How is it that you selected the month of October with respect to these various varieties of Grapes?

A. Well, we understood that that was a thoroughly representative month.

Q. Would you say that is a fairly representative month with respect to the movement of Thompson Seedless?

A. I am not sufficiently expert in distinguishing these grapes to tell you which is a representative month for any one of them.

Q. So when you compiled these figures you did it in the absence of any knowledge as to whether the month of October is representative with respect to the various varieties shown?

A. We had previously shown October, 1949, and we brought this exhibit up to date by adding October, 1950.

Q. So you did it just because you did it before?

A. Yes, and in selecting before we thought that we had a fairly representative month.

Q. Did you take any recognition of the fact that some of these cars may have moved by Railway Express Agency rather than by freight?

A. No.

Q. So that you are unable to say at this time whether any of these cars represented on page 8 moved by Express Agency, where the rate might be twice as much as compared with freight?

[fol. 1633] A. Well, if you look at the heading of the exhibit you will see it excludes receipts by Express or Plane.

Q. So you are changing your testimony now——

A. I never testified to the effect that this included all shipments. You suggested that in your line of cross examination.

Q. How did you ascertain whether these excluded Express?

A. The Publication from which the prices were taken specifically showed these were prices for those other than those by Express or plane.

Q. Did you make any study of what the private sale market prices might be during the month of October?

A. No.

Q. 1950?

A. No, I didn't.

Mr. Hoffman: No further questions.

Exam. Walsh: Any further questions on cross examination of the witness?

(No response.)

Exam. Walsh: The Witness is excused.

(Witness excused.)

Exam. Walsh: I should like if respondents would supply for the record at this time, what the present unloading charges are; that is, reflecting the various increases.

Mr. Smith: At this time?

[fol. 1634] Exam. Walsh: At some time.

Mr. Smith: Yes. We will do that.

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Mr. Miller: They are the same as at the last hearing.

Exam. Walsh: Haven't you had 168 since then?

Mr. Smith: They have not applied on these prices, Mr. Examiner.

Mr. Smith: I will give the charges now, Mr. Examiner, if you wish.

Exam. Walsh: All right.

Mr. Smith: The present unloading charges are as follows:

Citrus fruits, $1.95 per ton.

Fresh fruits, other than citrus, $2.28 per ton.

Melons, including Canteloupes, $2.60 per ton.

Vegetables, fresh or green, not cold pack or frozen, $1.95 per ton.

Vegetables, fresh or green, not cold pack or frozen, when top icing or body icing is used, $2.60 per ton.

The charges today are the same as they were on November 1, 1948, when they became effective.

Exam. Walsh: Thank you.

Mr. Wells: For clarification, may I inquire if those are not the exact amount of the charges as published in the tariff which initially was suspended, but were plused by the increases of Ex Parte 162?

Mr. Smith: 166 I believe.

[fol. 1635] Mr. Wells: 166 was it?

Mr. Smith: That is correct.

Exam. Walsh: Respondents may call their next witness.

Mr. Smith: Mr. Root.

Mr. Examiner, according to your opening statement, I assume Mr. Hodkinson's exhibits have been received?

Exam. Walsh: You offer them now?

Mr. Smith: I will offer them now anyway.

Exam. Walsh: Exhibits 136 through 145, inclusive, Witness Hodkinson, are received in evidence.

(Respondents' Exhibits Nos. 136-145, incl., Witness Hodkinson, were received in evidence.)

E. S. Root was sworn and testified as follows:

Redirect examination.

By Mr. Smith:

Q. Mr. Root, have you distributed to the Commission and all parties prepared testimony and two exhibits?

A. I have.

Q. Will you identify your exhibits so they may be given a number for identification?

Exam. Walsh: The next one will be 146.

The Witness: Exhibit consisting of 18 sheets will be Exhibit 146 and the exhibit consisting of three pages will be Exhibit 147.

Exam. Walsh: They will be marked Exhibit 146 and 147. [fol. 1636] (Respondents' Exhibits Nos. 146 and No. 147, Witness Root, were marked for identification.)

Mr. Smith: Mr. Examiner, I suggest Mr. Root's testimony be copied in as though read.

Exam. Walsh: Is that agreeable to protestants?

Mr. LaRoe: Yes, that understanding will apply to all such offers in this proceeding, unless otherwise indicated.

Exam. Walsh: All right.

By Mr. Smith:

Q. Kindly state your full name and business address.

A. Eugene S. Root, Midland Building, Cleveland, Ohio.

Q. You have testified previously in this proceeding?

A. I have.

Q. What is your occupation?

A. Chief of Research, Erie Railroad Company.

Q. Is that the same as when you gave your previous testimony?

A. Yes, sir.

Q. You are familiar with the notice of the Interstate Commerce Commission, dated October 10, 1950, requiring certain additional data to be furnished by respondent railroads in this proceeding?

A. I am.

Q. As a result of that notice have you prepared, or had prepared under your jurisdiction, a study of the terminal

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costs of handling fresh fruits and vegetables from Croxton, N. J., to Duane Street Piers at New York City as compared [fol. 1637] with team track delivery at Jersey City, N. J., and on Manhattan Island?

A. Yes, I have. This study has been summarized on eighteen pages.

(Study marked as Exhibit No. 146 for identification.)

Q. Will you describe Exhibit No. 146.

A. Before describing Exhibit No. 146 in detail, I would like to make some general comments regarding the study. The only team tracks the Erie Railroad has on Manhattan Island are at 28th Street. Less than 400 cars of fruits and vegetables were delivered on these tracks during the year 1950, and these were almost entirely carloads of vegetables.

At Jersey City, fruits and vegetables are delivered at the Pavonia Ave. team tracks, and, during the juice grape season, deliveries of juice grapes are made at Monmouth Street yard. Excepting grades, there were less than 100 cars of fruits and vegetables handled on team tracks at Jersey City during the year 1950. As the juice grape season had closed prior to the time any study could be made in response to the Commission's notice, our study at Jersey City was limited to the team tracks at Pavonia Ave.

Both the team tracks at 28th Street, New York City, and Pavonia Ave., Jersey City, are used primarily for the delivery of dry freight. As it was impracticable to segregate costs for team track delivery of fruits and vegetables from [fol. 1638] other team track deliveries, the costs per car included in my Exhibit No. 146 are the average of all team track deliveries at the locations named.

The terminal operations covered by Exhibit No. 146 are haul by Croxton Yard Crew from Croxton Yard, the break-up yard for eastbound trains, to Jersey City, a distance of approximately two miles; any classification switching that is performed by Jersey City Yard crew; placement on team track or carfloat by Jersey City Yard crew, floating to Duane Street Piers and 28th Street Floatbridge, New York City; pier costs at Duane Street; floatbridge switching and delivery on team track at 28th Street by 28th Street yard crews, and return of empty car to Croxton, N. J.

Q. Will you explain briefly each page of your Exhibit No. 146.

A. Page 1 of Exhibit No. 146 summarizes each of the costs of the above described operation by destination. The costs summarized on this page are supported by further detail as shown by page reference. The total costs, including return on depreciated investment, shown on line 18, are $46.00 for delivery to Duane Street piers, $10.73 for delivery on team track at Jersey City, and $45.44 for delivery on team track at 28th Street. Costs for unloading at Duane Street piers are not included in this summary.

Page 2 of Exhibit No. 146 summarizes the yard switching costs. The costs per yard engine minute for Croxton, [fol. 1639] Jersey City, and 28th Street yards have been applied to the average switching minutes per loaded car, including handling of the return empty, in each class of switching performed by the respective yard crews. The minutes in each class of switching are based on special time studies made under my direction at these yards for the one week period December 14 to 20, 1950. The costs per minute are taken from page 3 of this exhibit.

I wish to direct particular attention to the classification time at Jersey City for cars destined to 28th Street and Duane Street. Line 5 shows 9.31 minutes for cars destined to 28th Street Team track, and line 10 shows 1.15 minutes for cars destined to Duane Street. The great disparity between these figures is due partly to differences in operation, and partly to the mechanics of making this study.

Cars of perishable traffic destined to Duane Street are classified at Croxton Yard for direct placing on the floats at Jersey City. Only occasional classification work is required at Jersey City. Because of this, it was practical to segregate the classification on such cars at Jersey City. This was likewise true on cars destined to Long Island and Bush Dock. On the other hand, cars destined to other New York Harbor points are rarely classified at Croxton for direct placing on flats at Jersey City. This requires considerable classification at Jersey City.

It was impracticable in the study to segregate the classi- [fol. 1640] fication of cars destined to 28th Street from other cars in this latter group. Therefore, the classifica-

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tion at Jersey City Yard of 9.31 minutes shown on line 5 as applicable to cars destined to 28th Street team track is the average classification for all cars floated from Jersey City, excepting Duane Street piers, Long Island Railroad and Bush Dock destinations.

Page 3 of Exhibit No. 146 shows the computation of the cost per yard engine hour and per yard engine minute for Croxton, N. J., Jersey City, N. J., and 28th Street, New York City yards.

Locomotive depreciation, wages and fuel costs at these yards for the month of December, 1950, are divided by the respective yard engine hours for that month to determine the equipment depreciation, wage and fuel cost per yard engine hour shown on line 15. The annual depreciation on roadway property and taxes on such property for each yard are divided by the respective yard engine hours for the year 1950 to determine such costs per yard engine hour shown on line 5.

To determine the remaining yard engine hour costs, there is deducted from the total system yard expenses for the year 1950, locomotive depreciation, taxes, wages and fuel cost for that year, and the remainder divided by the system yard engine hours for the year 1950. The resulting engine hour cost is shown on line 21. The totals of these various engine hour costs are shown on line 22. These are divided by 60 to produce the costs per yard engine minute for these yards, shown on line 23.

[fol. 1641] Pages 4, 5 and 6 of Exhibit No. 146 show in detail the allocation of the system freight operating expenses, taxes and rents to yard service, other services, and overhead expenses for the year 1950. The method of allocation is shown on the right hand side of these pages. There is computed on page 6 of this exhibit the ratio of overhead expenses to directly assigned expenses which is applied to the directly assigned costs on page 1 of this exhibit to cover overhead costs.

Page 7 of Exhibit No. 146 shows the computation of the cost per loaded car of floating from Jersey City, N. J., to Duane Street piers, and to 28th Street, New York City.

The costs per hour for tug service and carfloat expenses have been applied to the average tug boat hours and carfloat hours per round trip of carfloat (including a proportion

of non-productive time) to 28th Street and Duane Street, New York City, respectively (lines 8 and 9).

The hours are based on an analysis made under my direction of all marine operation in New York Harbor for the one week period, December 14 to 20, 1950. To the costs of tug service and carfloat expense per round trip of carfloat has been added floatbridge expense at Jersey City and 28th Street, and certain marine department expenses incurred at Duane Street.

The total cost per round trip of carfloat for each destination has been divided by the average number of loaded cars per round trip of carfloat to determine the cost per loaded [fol. 1642] car on line 14.

Page 8 of Exhibit No. 146 shows the computation of the unit costs of floating used on page 7. Briefly, the principal items of expense were determined for the test week in the following manner. Maintenance of shore facilities are one week's proportion of an engineering estimate of annual expense. Repairs of tugboats and carfloats were based on the average cost per tugboat hour and carfloat hour, respectively, for the years 1946 to 1950, inclusive, applied to the actual hours during the test week. Wages of tug crew and floatmen were based on the average cost per tugboat hour and carfloat hour, respectively, for the month of December, 1950, applied to the actual hours during the test week.

The total expenses for the test week applicable to the different units of service are shown on line 15. The cost per unit shown on line 18 was determined by dividing line 15 by the units shown on line 16.

Page 9 of Exhibit No. 146 details the computation of costs per car for miscellaneous station employees and police protection at 28th Street, New York City.

Pages 10 and 11 of Exhibit No. 146 show the detail of the computations of costs per car for certain miscellaneous expenses at Duane Street, New York City, including miscellaneous station employees, rental, maintenance, insurance on piers and contents, and heating and lighting of the piers.

[fol. 1643] In my testimony with respect to Exhibit No. 23 in this proceeding, which was our study of the cost of unloading, I stated there were two classes of employees

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carried on the contractor's payroll that had been omitted from our unloading costs: "namely, the A-line men and the Sealer-Ice Clerk."

(Pages 208 and 209, Transcript.)

We also excluded from our unloading costs the expense of unloading gangs assisting the A-line men.

(Page 210, Transcript.)

In my present Exhibit No. 146 I have also excluded the cost of A-line men and expenses of unloading gangs assisting these men (these men function with respect to recoopering and I have omitted all re-coopering costs), but I have included in line 7 on page 10 the wages of the Sealer-Ice Clerk plus the overheads paid the contractor for this class of employee. It will be noted that the expenses at 28th Street include this type of expense on line 2 of page 9.

I also testified at that time (pages 217-218 of the Transcript) regarding other items of expense assumed by the Erie at Duane Street piers which were excluded from our unloading cost study. With two exceptions, these items of expense I enumerated are now included on page 10 and 11 of Exhibit No. 146. The two exceptions are:

(1) Maintenance of equipment used by the contractor (but owned by the Erie) such as hand trucks, gang planks, [fol. 1644] race pieces, etc.

(2) Re-coopering of packages.

Page 12 of Exhibit No. 146 shows the ratio of freight proportion of non-revenue net ton miles to revenue net ton miles for the year 1950. This ratio is applied to the directly assigned costs on page 1 of this exhibit to cover the costs of handling non-revenue traffic.

Page 13 of Exhibit No. 146 shows the computation of and summarizes the return on depreciated investment per loaded car in yard property used in making deliveries to Jersey City team track, 28th Street, New York City team track, and Duane Street piers. The return per yard engine minute has been applied to the average switching minutes shown on page 2 of this Exhibit, previously referred to, to determine the return required per car. The returns per

yard engine minute are taken from pages 14, 15 and 16 of this Exhibit.

Page 14 of Exhibit No. 146 details the computation of the amounts required per yard engine minute to provide return on depreciated investment in property used in the haul from Croxton, N. J., to Jersey City. Return of 6% has been computed on the depreciated investment in road property, and this divided by the yard engine hours in haul service for the year to determine the cost per yard engine hour for road property. Depreciated investment on yard locomotives at Croxton was computed on the basis of use of locomotives during the month of December, 1950. Re-
[fol. 1645] turn at 6% was computed on this depreciated investment and divided by the yard engine hours for the month of December to determine the cost per yard engine hour for equipment. The cost per yard engine hour shown on line 23 was then divided by 60 to determine the cost per yard engine minute.

Page 15 of Exhibit No. 146 details the amounts required per yard engine minute to provide return on depreciated investment in property used in yard service at the Jersey City yard. The same method of computation was used as for page 14.

Page 16 of Exhibit No. 146 details the computation of the amounts required per yard engine minute to provide return on depreciated investment in property used in yard service at 28th Street, New York City. Here again the method used is the same as on page 14.

Page 17 of Exhibit No. 146 shows the computation of and summarizes the return on depreciated investment per loaded car for marine property used in making deliveries to 28th Street and Duane Street, New York City. The return per tugboat hour and carfloat hour has been applied to the average tugboat hours and carfloat hours shown on page 7 of this exhibit, previously referred to, to determine the return per round trip of carfloat for tug service and carfloats. To this has been added the return per carfloat for floatbridge at Jersey City. Total return per round trip shown on line 7 is divided by loaded cars per round trip of carfloat to determine the return per loaded car shown on [fol. 1646] line 8. Returns per unit used on this page are taken from page 18 of this exhibit.

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Page 18 of Exhibit No. 146 details the computation of the amounts required per service unit to provide return for depreciated investment in property used in marine service. Return at 6%, shown on line 9, has been computed on the total depreciated investment in property separately for tug service, carfloats, and floatbridge at Jersey City, and then divided by the units for the year 1950, to determine the average return per unit.

Q. Does this complete the detailed explanation of your Exhibit No. 146?

A. Yes, sir.

Q. Have you any further general comments with respect to your Exhibit No. 146?

A. In order that there may be no misinterpretation of the costs shown on page 1, I wish to recapitulate certain statements I have made in this testimony and state one or two additional facts.

First, Exhibit No. 146 does not include any cost of recoopering, or inspection by the Railway Perishable Inspection Agency.

Second, Exhibit No. 146 does not include any of the cost of unloading fruits and vegetables at Duane Street used in my Exhibits No. 23 and 127 in this proceeding.

Third, the costs shown for team track delivery at 28th Street and Jersey City are the average of all traffic handled on those team tracks.

[fol. 1647] Fourth, the costs shown for 28th Street team track cars include classification at Jersey City, which on Duane Street perishable traffic is performed almost entirely at Croxton Yard. The cost of the latter is not included in this Exhibit No. 146. If it were not for this fact, the excess cost of pier delivery at Duane Street over 28th Street team track delivery would be far greater than the 56¢ shown by this Exhibit. This can be understood when we compare the cost of classification at Jersey City on Duane Street cars of 54¢ shown on line 2 of page 1 of Exhibit No. 146, plus return on investment per car for classification of 6¢ on line 12 of page 13, a total of 60¢, with the classification at Jersey City for 28th Street cars of $4.35 on line 2 of page 1, plus return on investment per car for classification of 50¢ on line 6 of page 10, a total of $4.85.

Q. At the hearing in New York in July, 1947, you intro-

duced Exhibit No. 23, consisting of three sheets, summarizing a study made by you of the cost of unloading fruits and vegetables at the Erie's Duane Street Piers. At the subsequent hearing in Brooklyn in September, 1949, you introduced Exhibit No. 127 which represented an adjustment of your original unloading cost -tudy to give effect to certain changes in compensation paid employees of the Seaboard Terminal and Refrigeration Company. Have there been any further changes in the compensation paid Seaboard employees which would affect the results shown in Exhibit No. 127?

[fol. 1648] A. Yes. The 20¢ per hour wage increase to which I referred in the record of the September, 1949, hearing (transcript pages 1354-1355) was granted in November, 1949, retroactively to September 1, 1949. Further, certain increases in compensation were granted to the foremen and office personnel effective January 1, 1951.

Q. Have you prepared an exhibit to show the effect of these changes in compensation paid on the costs per ton for unloading fruits and vegetables?

A. I have prepared an Exhibit consisting of three pages to show current costs of unloading, headed: "Erie Railroad Company—Cost of Unloading Fruits and Vegetables, Duane Street Piers, New York City."

(Study offered as Exhibit No. 147 for identification.)

Q. Will you please describe Exhibit No. 147.

A. Sheet 1 of Exhibit No. 147 is the same as Sheet 1 of my original Exhibit No. 23 in these proceedings, and shows separately for Citrus Fruits, Fresh Fruits (other than citrus), Fresh or Green Vegetables—top iced, Fresh or Green Vegetables—not top iced, and Cantaloupes and Melons, the number of cars unloaded, and unloading gang minutes required for the test period covered by my original study. On Sheet 2 of Exhibit No. 147 I have shown in column 2 the contractor's cost for the test period as shown on Sheet 2 of my original Exhibit No. 23. Column 3 shows the per cent increase of current wage rates over the rates in effect during the test weeks, and in Column 4, the test [fol. 1649] weeks' costs have been restated to current levels. The revised percentage used for computing insurance and taxes on line 11 is based on the year 1950.

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Revised cost per unloading gang minute of 31.21¢ compared with 21.55¢ during the test weeks is shown in line 15. In restating these costs, I have not given effect to the increased vacation allowance currently being granted. The restated cost per unloading gang minute is, therefore, understated to this extent.

On Sheet 3 of my Exhibit No. 147 there is shown in Column 2 the gang minutes per ton for the various commodity groups as shown on Sheet 1 of this Exhibit. I have applied to the gang minutes per ton the cost of 31.21¢ per minute as computed on Sheet 2 of this Exhibit to determine the total unloading cost per ton in Column 3.

As stated in my testimony at the first hearing, the unloading gang minutes per ton include the time of assorting fruits and vegetables. Under present tariff provisions, including the interim increase in Ex Parte 175, the consignee is charged $4.66 per car on Cantaloupes and Melons, and $4.82 per car for all other Fruits and Vegetables for assorting. This tariff carload rate has been divided by the average number of tons per car in the test weeks for each commodity group and the averages per ton shown in Column 4. These amounts have been deducted from the total unloading cost per ton shown in Column 3 to deter- [fol. 1650] mine a net cost per ton for each commodity group in Column 5.

Q. Mr. Root, at the first hearing you testified that not all fruits and vegetables were assorted; however, that the method of computation that you used in your Exhibit No. 23 assumed that each car was assorted, and as a result the net costs per ton were understated. Are these statements true with respect to your present Exhibit No. 147?

A. They are true. I would like to emphasize that most cars of vegetables are not assorted, and for this reason the total cost per ton shown in Column 3 for Fresh or Green Vegetables—top iced, and for Fresh or Green Vegetables—not top iced, more nearly represents the actual cost of unloading than the net cost shown in Column 5.

Q. What are the net costs per ton for unloading in each of the selected commodity groups as shown in Exhibit No. 147?

A. The average net cost per ton for Citrus Fruits is $1.7621; for Other Fresh Fruits, $2.4897; for Fresh or

Green Vegetables—Top Iced, $2.9652; for Fresh or Green Vegetables—not Top Iced, $1.7434; for Cantaloupes and Melons, $2.6259.

Q. In connection with Exhibit No. 127, you stated (pages 1351-1352 of Transcript) that subsequent to the time your original study had been made, there had been a change in method of display of citrus fruit, and further, that the average load per car for oranges had declined from 561 boxes, or 47,685 pounds per car, to 462 boxes, or 39,270 [fol. 1651] pounds per car. What is the situation with respect to these two items at this time?

A. There has been a change in the method of display of citrus fruit since the introduction of my Exhibit No. 127, and the method currently being used is the same as at the time of my original study of unloading costs. The average load per car for oranges remains at 39,270 pounds, and is less than the 47,685 pounds per car existing at the time of my original study. No consideration has been given in Exhibit No. 147 to this reduced loading per car.

Mr. Smith: I have a few additional questions of Mr. Root, Mr. Examiner.

Exam. Walsh: All right.

Mr. LaRoe: Just a moment please. Mr. Examiner, I am sorry, but I must object to the receipt of these exhibits because they do not comply with the notice which the Commission issued on October 10.

One of the main purposes, as the Examiner has already stated in his opening statement, was to obtain certain information which the Commission thought was pertinent and important in this proceeding, and among other things, "and any difference in nets resulting from the fact that pier delivery does not require an investment in team track facilities."

I am reading from the Commission's notice of October 10.

As I read Mr. Root's study, and he will confirm this I [fol. 1652] believe,—You have not, have you, Mr. Root, made any study of exact team track facilities which would be required to handle all of the Erie cars at Manhattan, or the investment therein?

The Witness: I have not.

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Mr. LaRoe: Well, it is quite apparent therefore, Mr. Examiner, that the exhibit does not show the difference in cost to which the Commission refers in its notice, and I am obliged to object to the exhibits on that ground.

Mr. Smith: If the Examiner please, we think that Mr. Root's exhibits do comply with the Commission's notice.

We did everything that we thought the Commission wanted us to do in making such compliance.

We are not offering these exhibits because we think they are material or relevant to the case. We were directed by the Commission to prepare these exhibits and we have done so to the best of our ability. That is why we are here to present them.

Mr. LaRoe: My point, Mr. Examiner, is this: That the expression, the fact that pier delivery does not require an investment in team track facilities, clearly means that if the piers were not there, an investment in team track facilities would be required, but the study does not comply with that.

It does not show what investment would be required.

Mr. Miller: The notice certainly does not clearly show any such fact at all. Mr. LaRoe is giving us a preview of [fol. 1653] his argument only.

The exhibit very definitely does show the investment cost of team tracks.

Mr. LaRoe: Present team tracks.

Mr. Miller: That is right. That is what the notice was intended to ask and Mr. Root has fully complied with the terms of the notice.

Mr. Wells: Mr. Examiner, I would like to join in the objection as made by Mr. LaRoe, because clearly the information that was indicated by the notice of the Commission is something entirely different from what is attempted to be submitted by the respondents in the testimony and in the exhibits, and I refer that not only to the exhibit and testimony immediately under discussion but also the similar ones from witnesses of the other respondents.

Mr. Thornton: On behalf of the City of New York we concur in Mr. LaRoe's interpretation of the notice and as we read it we feel what the Commission was interested in was comparison of cost between things that you can prop-

erly make a comparison; that the railroads should be able to handle the volume at the team tracks that they handle at the piers and that is the only fair comparison you can make; and I would like to ask does Mr. Root feel the team tracks can handle the volume the Erie handles at the station.

Mr. Smith: The Erie's team tracks on Manhattan Blvd. [fol. 1654] are not physically large enough to handle all of the traffic which we now handle at the piers.

Mr. LaRoe: This does go to the very heart of the case. You will recall, Mr. Examiner, that the argument was made that the railroads should make team track delivery at least as a normal proposition, and that in the absence of team tracks they were giving pier station delivery as their normal station delivery.

Now, the Commission very clearly wanted to know what team tracks would be required if the piers were not there, because the language is "difference in cost resulting from the fact that pier delivery does not require an investment in team track facilities."

Well, if it does not require an investment in team track facilities what would that investment be? That question remains unanswered although that apparently is the very thing the Commission was aiming at.

Mr. Miller: Mr. Examiner, I suggest this whole discussion is rather pointless. The Commission well knows what it desired when it requested this information.

This is the information that has been prepared. It is rather absurd to argue it should not be admitted on the ground that it doesn't conform with Mr. LaRoe's idea of what the Commission intended.

Mr. LaRoe: My argument is not that it fails to conform to Mr. LaRoe's ideas. My argument is it does violence [fol. 1655] to the plain English of this requirement of October 10.

Otherwise the expression, "difference in cost resulting from the fact that pier delivery does not require an investment in team track facilities" is meaningless.

Mr. Hoffman: Walter Hoffman concurs in Mr. LaRoe's statement and I might add further that the background and the environment of this entire case shows there could only be one interpretation of the Commission's order.

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It being admitted that the Erie team tracks are inadequate to handle our traffic, the question at issue then according to the Commission's direction is what would it cost if in lieu of present pier deliveries, the Erie expanded its team track facilities so as to be able to accommodate our traffic, and I say the background of this case it seems to me unequivocably supports that conclusion.

Exam. Walsh: Well, I should like to know how you can show a difference even in the rudiments of arithmetic if you don't have a minuend and a subtrahend,—if you don't have something to compare.

Mr. LaRoe: Precisely.

Mr. Smith: We made a comparison. The Erie has team tracks on Manhattan Island and we handle traffic on team track and we studied the pier car cost of handling traffic on the team tracks in Manhattan Island. We have compared the two.

Exam. Walsh: I will accept your exhibit and the discus-
[fol. 1656] sion has been very helpful. It will show on the record the view of protestants and it will also show your view.

Mr. LaRoe: But we would like the respondents if they will, to show us where the minuend and subtrahend are because we have not been able to make the subtraction.

That is all for now.

Mr. Loos: Mr. Examiner, less my silence be misunderstood, I desire to join in the objection, and I will not prolong the argument because the Examiner has already ruled, but I might suggest that while my arithmetic isn't clear enough in my recollection to be sure which is the subtrahend and which is the minuend, but the point is that Mr. Root's exhibit shows one but not the other.

Mr. LaRoe: That is correct, which is the minuend and which is the subtrahend depends on which is the larger, in this instance.

Exam. Walsh: Proceed, Mr. Root.

Mr. Smith: Are exhibits 146 and 147 received, Mr. Examiner?

Exam. Walsh: 146 and 147 will be received.

(Respondents' Exhibits 146 & 147, Witness Root, were received in evidence.)

Mr. Smith: I have a few additional questions of Mr. Root if you please.

By Mr. Smith:

Q. Since preparing Exhibit 146, Mr. Root, have you determined some overstatement of costs and some understate-
[fol. 1657] ments of costs with respect to Duane Street Pier cars to which you want to invite attention at this time?

A. I have.

Q. Proceed.

A. On page 8 of Exhibit 146——

Mr. Loos: Will you pause just a minute until we can find that page?

The Witness: Line 10, in the column headed "Duane Street" the amount of $131.31, there was erroneously included an amount in this figure which, while applicable to handling of fruits and vegetables, was not applicable to the Duane Street operation. The correct figure there should have been $59.24.

Shall I correct the exhibit all the way through? It only makes a difference in the total amount on page 1 of $46 shown for Duane Street, reduces that figure to $45.79.

Mr. LaRoe: Is that the last figure?

The Witness: The last figure on line 48.

Mr. LaRoe: Reduces $46 to what?

The Witness: $45.79.

Mr. LaRoe: We won't quarrel about that.

The Witness: On page 11——

Mr. Wells: Pardon me, while you are still on page 8, does that change that you made also change line 5?

The Witness: Oh yes. As a matter of fact, I will give you the corrections all the way through if you wish them. It
[fol. 1658] changes line 11 to 7¢ instead of 14; it changes line 13 to 2¢; line 15 to $59.33; line 18 to $.81.

By Mr. Smith:

Q. What are the changes on page 1, Mr. Root?

A. In line 7, under Duane Street Piers, the item of $11.46 would become $11.28, line 13, the item of $37.26 would become $37.08; line 14, the amount should read $4.27; line 15 should read $1.31.

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And I have already given the correction for line 18.

On page 11 of 146, there is shown the expense of heating and lighting piers 19, 20 and 21. The heating plant serving these piers is located at our Chambers Street Ferry facility, which is between Pier 19 and Piers 20 and 21.

We did not include in our exhibit any proportion of the rental of Chambers Street Ferry applicable to this heating plant.

28.37 per cent of the rental of Chambers Street Ferry is applicable to the use of these facilities for the heating plant.

The annual rental of Chambers Street Ferry facilities is $59,961. The proportion applicable to the heating plant is $17,010.94. Of this amount, 97.18 per cent is applicable on a radiation basis to heating Duane Street Piers.

There should have been included, therefore, an additional amount of $16,531.23 for rental of this heating facility. This amount, divided by the cars handled on these piers gives an additional cost of 76 cents per car including the overhead and non revenue expenses.

[fol. 1659] Q. Mr. Root, are the physical operations at the Duane Street Piers substantially the same today as they were when they were described by Witness Hart at the first hearing in this case?

A. They are.

Q. When is the peak period for deliveries by the Erie of freight to the Duane Street Piers?

A. In the past two years, our peak month has been in August.

Q. Throughout your testimony and exhibits you have used the expression, "Duane Street Piers." What piers are embraced in that expression?

A. Piers 19, 20 and 21.

Q. Were any fresh fruits and vegetables unloaded on Pier 19 during 1950?

A. No, there were not.

Q. Was that unusual?

A. Yes. Prior to 1950, fresh fruits and vegetables were unloaded regularly each year on each of Piers 19, 20 and 21. Pier 19 is still available for handling fresh fruits and vegetables and whether it will be used during 1951 and subsequent years will depend on the volume at peak periods,

operating conditions, desires of the trade, and other factors.

Q. If Pier 19 were discontinued as a pier—perishable piers, what would be the approximate effect upon the figure of $46 per car at the bottom of page 1 of Exhibit No. 146? [fol. 1660] A. The effect would be to reduce such figure by about one dollar and a half per car.

Q. Can you tell us briefly how this reduction of about one dollar and a half per car would be brought about?

A. I can.

Q. Will you do so?

Mr. Loos: Excuse me. I am not following Mr. Root. What page of your exhibit are you referring to?

The Witness: Well I am going to refer to it now.

Page 10, Mr. Loos. The rental of $7.81 per car shown on line 18 of page 10 would be reduced to $6.60 by excluding the rental of Pier 19 and the number of cars handled on Pier 19 in making the computation.

On page 11, maintenance of piers now reading $1.63 on line 21, would be reduced to $1.40.

Insurance, appearing on line 24, would be reduced from $1.75 to $1.57.

Heating and lighting, shown at $2.04, would read $2.35.

That would be an increase of $.31 due to the fact that Pier 19 is not heated, so there would be very little reduction in the expense, but there would be a reduction in the number of cars.

That makes a net difference of $1.31, those items; the overhead per cent and the non revenue would increase it by 18 cents, making a total difference of $1.49.

[fol. 1661] By Mr. Smith:

Q. Does the Erie Railroad have team tracks at Jersey City with sufficient capacity to handle the cars of freight now terminated at the Duane Street Piers?

Mr. LaRoe: I object to the question on the ground, Mr. Examiner, that we are dealing here with the delivery of this traffic at these piers on Manhattan Island. Neither at common law nor under the statute would delivery over in New Jersey constitute Manhattan delivery and therefore whatever the cost may be in New Jersey is immaterial and

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irrelevant, has nothing to do with the making of reasonable delivery.

My objection also runs, if it is possible to make objection to what the Interstate Commerce Commission has done, to the wording of their notice, which requires a study of the New Jersey terminal costs.

I just see no escape, Mr. Examiner, from the conclusion that both under the statute and common law, delivery means reasonable delivery and reasonable delivery means at a reasonable convenient and accessible point. You can't have reasonable delivery for Manhattan somewhere over in New Jersey, and I therefore object to any testimony here with respect to New Jersey deliveries, even though it is included in the ICC notice.

Mr. Smith: Mr. Examiner, I don't propose to argue the case. I don't believe you want us to at this time. However, the Commission's notice does refer to Jersey City team tracks and I think the question is pertinent, and should be [fol. 1662] answered in the light of what the Commission said in its notice.

Exam. Walsh: All right. The witness will answer.

Mr. LaRoe: Mr. Examiner, I assume it is not necessary to take exception to your rulings each time. It will be understood the exception is made?

Exam. Walsh: Exception is made.

The Witness: We do have.

Mr. Smith: That is all of this witness on direct.

He did not finish his answer.

The Witness: You didn't let me complete my testimony before.

Mr. LaRoe: I am sorry if I interrupted.

The Witness: After I arrived at this correction of $1.49, by excluding Pier 19, then with respect to my testimony of the rental of the heating facility on Chambers Street Ferry, I testified that would be 76¢, by excluding Pier 19, that amount would increase to 91¢, instead of 76¢.

Mr. Smith: Does that complete your testimony?

The Witness: Yes.

Mr. Smith: That is all on direct.

Exam. Walsh: Cross examination.

Mr. LaRoe: I am not sure I have any cross examination but for clarification: your testimony regarding the elimina-

tion of Pier 19, or possible elimination of Pier 19, does that suggestion grow out of a decline in the volume of this traffic in 1950?

[fol. 1663] The Witness: My understanding is, Mr. LaRoe, that in 1950, in order to better serve the melon trade, we moved the handling of melons from Pier 19 to Piers 20 and 21.

Recross-examination.

By Mr. LaRoe:

Q. And you found that piers 20 and 21 were adequate to handle the whole volume of fruits and vegetables?

A. We handled them that way in 1950.

Q. What I mean is: can you continue to handle them on those two piers?

A. Well, we can continue to handle them on those two piers as long as conditions are the same as they were in 1950.

Q. Was there a subnormal volume in 1950, if you know?

A. I don't think 1950, my recollection is, was greatly different than 1949.

Q. That was my recollection too, so what really has happened here is that you have made an operating change which allows you to get rid of the cost of one pier out of three?

A. No. We have transferred some of our operations from Piers 20 and 21 to 19.

Q. Yes, but I mean——

A. I mean we operate the piers, have operated the three piers more or less as units since we have had 19, and when it was necessary to use 19 on any particular night, or or any particular week, or any particular month, for fruits and vegetables, we have done so.

[fol. 1664] Q. But what I am trying to bring out is that by reason of this change in operating practice, it is your intent to discontinue the use of pier 19 unless there is some up-swing in volume which would make it necessary to resume the operation of that pier?

A. I am sorry. I couldn't say as to the intent, no.

Mr. Smith: I am sure this witness doesn't know that and I don't know it. That is a matter that hasn't been decided.

Mr. Donadio: I didn't understand he had testified he

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had discontinued the use of Pier 19. That would seem to be implicit in your question.

By Mr. LaRoe:

Q. Has there been any use of Pier 19 for this traffic since that operating change was made?

A. What do you mean by "this traffic"?

We handle, of course, carloads on pier 19. We are still handling carload traffic on Pier 19.

Exam. Walsh: Of fruits and vegetables?

The Witness: We are not handling fruits and vegetables on Pier 19.

By Mr. LaRoe:

Q. When did you discontinue handling fruits and vegetables on Pier 19?

A. I don't know whether it was in January, 1950, or whether it started in December 1949, but we didn't handle any during the year 1950.

Q. Or since?

A. Or since.

[fol. 1665] Mr. LaRoe: Thank you.

Cross-examination.

By Mr. Thornton:

Q. When you prepared your studies, Mr. Root, did you at any time consider or make any studies as to the cost of a comparison of expanded team tracks sufficient to handle all the fruits and vegetables delivered by the Erie on the Piers?

A. I did not.

Q. When you made this study did anyone direct you as to what types of comparison you should make?

A. I discussed, of course, with our management as to what the Commission's order required, and in my humble judgment we fully complied with the order.

Mr. Thornton: That is all.

Exam. Walsh: Any further cross examination?

Mr. Loos: Yes. I have some questions.
Exam. Walsh: Mr. Loos:

Cross-examination.

By Mr. Loos:

Q. In referring, Mr. Root, to the discontinuance of handling fruits and vegetables on Pier 19, prior to that time did you also handle on Piers 20 and 21 any traffic in addition to fruits and vegetables?

A. Yes, we handled merchandise traffic.

Q. Do you still handle some merchandise traffic on Piers 20 and 21?

[fol. 1666] A. We do.

Q. Has there been any substantial change in the amount of that traffic or the nature of that traffic since your prior testimony and the prior testimony of other Erie officials in this proceeding?

A. No. I don't believe there has.

Q. You testified with reference to the separation of the cost of rentals as between Piers 19 and 20 and 21, and you gave certain figures as to the cost per car after excluding Pier 19. Did that take into consideration an allocation between Pier 19 on the one hand, and Piers 20 and 21 on the other of your credits?

Perhaps if that isn't clear, we had better look at page 10 of your exhibit.

As I understand your testimony, it was that the figure of $7.81 is at the bottom of that page, average cost per car, line 18, became 660.

A. That is correct.

Q. In arriving at that you are taking into consideration not only the allocation of rentals, as between the two sets of piers, but also the allocation of your credits, shown in lines 14 and 15?

A. That is correct.

Mr. Loos: Mr. Examiner, I took advantage of the opportunity to examine the Erie's—or Mr. Root's working papers and underlying data in connection with this exhibit, and at [fol. 1667] my request Mr. Root has furnished me with certain figures which are not in the record, but which I

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think should be in the record, taken from these working papers—not so much with the idea of attacking the accuracy of the exhibit as with the idea of clarification, and to show additional information which I think will be helpful to the Commission, and he has just furnished me this morning a few additional figures.

I have assembled all of these in the form of a statement which I would like to offer as an exhibit after Mr. Root has checked it, and I would suggest that a great deal of time might be saved if I could hand this to Mr. Root now and after he has checked it, recall him for further cross-examination.

Mr. LaRoe: Do you have any copies of it?

Mr. Loos: I can make up some copies.

Exam. Walsh: That will be satisfactory.

Mr. LaRoe: It is something I have not seen.

Mr. Loos: Before I offer it I will have copies to distribute.

Mr. Wells: I wonder if I might ask a question for clarification, please.

Exam. Walsh: Yes, Mr. Wells.

Cross-examination.

By Mr. Wells:

Q. Mr. Root, as I understand you gave some amounts with respect to pages 7, 9, 10 and 11, of what the item would be if Pier 19 were eliminated; is that correct?

A. That is right. I think it was only to pages 10 and 11.

[fol. 1668] Q. That is pages 10 and 11?

A. That is right.

Q. Have you brought that forward to determine what the amount in the last item on line 18 would be if those revised amounts were used?

A. If we were—I think it is on the record, Mr. Wells—but if we were to eliminate Pier 19 from the computation of rental, insurance, heating, and lighting, we would reduce our cost by $1.49.

Q. Do I understand then that the $45.79 correction that you gave would become $44.30 if Pier 19 were eliminated?

A. That is correct. And then by including the proportion

of rental for the heating facility that would add 91 cents to that figure. It would add 91 cents.

Q. Well, you mean your 91 cents for heating with Pier 19 eliminated is comparable to the 76 cents?

A. That is correct.

Q. Including all three piers for heating alone?

A. That is correct.

Q. So that the $45.79, plus 76, including Pier 19, would be comparable to $4.30, plus 91 cents, without Pier 19?

A. That is correct.

Cross-examination.

By Mr. Seals:

Q. Line 17, page 10 of 18, should that $24,690 figure be changed in view of the elimination of Pier 19?

Exam. Walsh: On page 10, line 17.

[fol. 1669] The Witness: My exhibit should not be changed. I am merely giving what the figures would be if we eliminated Pier 19.

By Mr. Seals:

Q. You say number of cars handled at Piers 19, 20, and 21. Will that figure be the same?

A. Not if we exclude Pier 19.

Mr. Seals: Thank you.

The Witness: That figure would be 20,870 cars.

Mr. Smith: That is if Pier 19 cars were eliminated?

The Witness: That is correct.

By Mr. Seals:

Q. Would that also be true of line 9?

A. No. Line 9 is strictly fruits and vegetables.

Q. It would change line 20 though at page 11, would it not?

A. That is correct; and line 23 also; and line 28; but now you are only speaking about the correction to the number of cars.

Understand the money will change also.

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Cross-examination.

By Mr. Pettijohn:

Q. Can you give us the revised cost under Duane Street on page 1 of your Exhibit 146, to give a figure of $44.30?

A. I wonder if you would mind repeating that?

$44.30 of course is the $55.79 less this item of $1.49, if we eliminated Pier 19 from all calculations in this exhibit.

Q. You authorized on page 7 a decrease of 18 cents from $11.46 to $11.28?

[fol. 1670] A. That is correct.

Q. Due to the change on Item No. 12.

A. That is correct.

Q. You next authorized for Item 9 a decrease from $7.81 to $6.60.

A. I don't authorize that decrease. I say that is what it would be if we eliminated Pier 19 from our calculations.

Q. You also take that correction, do you not, in arriving at your $44.30?

A. Yes. That is the way the $44.30 is arrived at.

Q. Now, your next item is No. 10. You show a decrease from $1.63 to $1.40, or a 23-cent decrease, do you not?

A. That is correct.

Q. On the next item you show a decrease from $1.75 to $1.57, or a 18-cent decrease?

A. That is correct.

Q. On the next item, No. 12, you show an increase from $2.04 to $2.35, an increase of 31 cents?

A. That is correct.

Q. On Item 14 you show a decrease from $4.29 to $4.27?

A. No.

Q. It is ten pier cent of your overhead?

A. No, because we revised these other figures.

Q. That is right. What was your revision on that?

A. That would become $4.13.

Q. That would be a 16-cent decrease, would it not?

[fol. 1671] A. Yes.

Q. And your 3 piers on that would be——

A. That would become $1.27.

Q. That would be a four. That would give you $1.69 decrease, would it not?

A. It should give $1.49 decrease.

Q. I mean it, your total decrease of $46.00, you have one dollar 49 on 13, you have 16, on 14, and 4 cents, on 15, which would give you $1.69 decrease, would it not? —in the aggregate?

A. In the aggregate the new total on line 18 would be $44.30.

Mr. Pettijohn: Thank you.

Cross-examination.

By Mr. Hoffman:

Q. What commodities are presently moving—being handled at Pier 19, Mr. Root?

A. Merchandise traffic. I don't know exactly what type.

Q. Are they unloaded at Pier 19?

A. I believe they are, certainly.

Q. Is there any charge made for the unloading of that merchandise at Pier 19?

A. No, sir.

Q. There is no charge?

A. No, sir.

Q. No tariff?

A. No, sir.

[fol. 1672] Q. Did I understand your testimony to be that if the volume of traffic handled by you on the other piers, other than 19, perishable, fruits and vegetables, does not increase in the future over 1949, and 1950 volume, you will have no further use for Pier 19 with respect to fresh fruits and vegetables?

A. I would like to make—I don't know what the intent will be or what the policy will be—I would like to make one comment though and that is the—it isn't going to depend upon the annual volume so much. You could have periods in the year that, due to weather conditions and such that your volume would be very low, but still you would want to provide for your peak periods.

Q. But in the meantime the pier would be used for other purposes?

A. Oh yes. Certainly. We try to operate efficiently.

Q. Mr. Root, I take it that one of the purposes of your

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study here is to contrast the over-all costs of operations at Duane Street Piers, as compared with the 28th Street Team track operation?

A. My purpose here was to comply with the Commission's order, Mr. Hoffman.

Q. And is it correct that you did make a study endeavoring to contrast the cost between those two points?

A. That is correct.

Q. And in making that study you sought to reflect all differences in costs between the operations at Duane Street [fol. 1673] and 28th Street Team track?

A. It is quite comprehensive. I will go along with it though and say "yes."

Q. Do you reflect in your cost studies any savings in cost by reason of the fact that cars are detained at 28th Street Team Track for a longer period of time than the detention of cars at Duane Street Piers?

A. As far as our costs are concerned, it would not make one penny of difference.

Q. And you have not endeavored to reflect that whatsoever?

A. No. There is nothing to reflect. Our cost is the same.

Q. Wouldn't the cost be different if the cars were detained at team tracks for a period as long as four days, as compared with the possible detention at Duane Street Piers of perhaps 12 hours?

A. No, sir.

Q. You charged demurrage don't you to the shipper for the detention of cars, do you not?

A. I am talking about what would be reflected in our costs, what we pay for the rental of cars is on a mileage basis and it *am*kes no difference whether it is held there for four days or three hours.

Q. So you believe in making charges for demurrage as against a shipper's detention of cars it doesn't reflect itself in the cost of the railroad operation?

[fol. 1674] A. I don't say that. I am talking about the expense of the cars. No, sir.

Q. Turning to page 8 of exhibit 146——

A. May I make one further remark, Mr. Hoffman? I may say this: insofar as the*re* being delayed there, we will say,

A. It should give $1.49 decrease.

Q. I mean it, your total decrease of $46.00, you have one dollar 49 on 13, you have 16, on 14, and 4 cents, on 15, which would give you $1.69 decrease, would it not? —in the aggregate?

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[fol. 1674] A. I don't say that. I am talking about the expense of the cars. No, sir.

Q. Turning to page 8 of exhibit 146——

A. May I make one further remark, Mr. Hoffman? I may say this: insofar as the*re* being delayed there, we will say,

for 48 hours, and resulting in any additional switching, or complicating the switching in any way, that is all reflected in our 28th Street Costs.

Q. But not the difference in the detention period of the car?

A. But not any difference as reflected in car rent. Let me put it that way.

Q. I wasn't talking about car rent. I am talking about costs, or benefits, or advantages.

A. Our cost study reflects all the costs at 28th Street, including whatever results from abnormal detention.

Q. And when you say "all costs" you only mean costs that appear physically on your books of record and no other costs or advantages that might exist.

A. That is right.

Q. So that your study confines itself soley to an analysis of bookkeeping entries?

A. That is correct.

Q. And you have not given any consideration of other advantages that might exist which do not reflect themselves upon the books of record?

[fol. 1675] A. I have given no consideration to anything other than what appears in our record of costs.

Q. And you have disregarded entirely the physical aspects of the two operations?

A. Not in so far as they are reflected in our costs. The difference in operation is certainly reflected in our costs.

Q. Turning to page 8 of exhibit 146 and line 10, you indicated that with respect to the Duane Street column, $131.31 is incorrect, and that the correct figure should be $59.24?

A. That is correct.

Q. And how did that error arise, Mr. Root, or what is the nature of that error?

A. It was an amount that was reported to us as handling fruits, we had a similar item in a prior study that we made at Duane Street and it was merely a lack of sufficient information that we allocated it to Duane Street. Now, we were hitting against time limit when we had *on* file this on April 16, you understand, and while we were trying to be extremely careful and were careful in preparing this exhibit, we did explore and further test our figures, further check

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our figures, after we filed the exhibit and at that time we determined that this particular item of expense, the only item that we found of that nature, should have not been allocated to Duane Street.

It is part of our marine costs, but it was not applicable to Duane Street.

[fol. 1676] Q. But you still haven't told me just what it was. I notice it is under the item "Operating Floating Equipment."

A. That is right.

Q. Wherein was the error made?

A. In reporting the amount to us by our accounting department, they reported that amount as handling fruit. We allocated it to Duane Street erroneously. That is all. It is an error, nothing else, just an error.

Q. Not a mathematical error but an error in judgment with respect to allocation?

A. That is right.

Exam. Walsh: We will recess for a few moments.

(Short recess)

Exam. Walsh: On the record.

Mr. LaRoe: I have one or two questions for clarification.

Cross examination.

By Mr. LaRoe:

Q. Will you look at page 3 of your exhibit 147? As I understand it those figures show the cost per ton by commodity groups to the Seaboard Terminal and Refrigeration Company, but they do not show what the Erie pays to that agency; is my understanding correct that the Erie pays to that agency $2.26 a ton on all fruits and vegetables handled?

A. That is correct.

Q. In your answers to your counsel, or someone else, you said that you made this study this way only because the ICC called for it this way.

[fol. 1677] Do you care to comment on whether the study made in this way has any significance?

Mr. Smith: Well, Mr. Examiner——

Exam. Walsh: The witness may answer.

Mr. Smith: I want to object to the question. I don't think it is up to this witness to discuss the materiality or the legal significance of this study. He has made it clear that 146 was made in compliance with the Commission's notice and I think that is sufficient.

Mr. LaRoe: I am not asking for a legal significance. This man is an expert cost man and I simply want to know whether as an expert cost man he would have made this study this way if left to himself and what significance it has.

The Witness: If my management had asked me to compare the costs of handling fruits and vegetables at Duane Street with what it would cost us to handle them at Jersey City, or at 28 Street to the extent that we have capacity at 28th Street to handle them, I would have prepared the cost study in exactly the same way.

By Mr. LaRoe:

Q. Now, if you had been making it with a view to determining what it would cost you to handle at your team tracks if you didn't have the piers, would you have made it this way?

A. Well, then necessarily we would have had to go to the Engineering Department, or someone, and it would probably *would* have been turned over to them to have made [fol. 1678-1679] some sort of a study of that nature.

Q. Including the investment in the real estate?

A. Oh yes, certainly.

Q. And you have done it this way only because of the wording of the ICC notice?

A. That is correct.

Q. Your interpretation of that wording?

A. That is correct.

Q. And to get the record perfectly clear, you interpreted the ICC wording as calling for a study not of what the saving in cost would be, if you didn't have the piers, or what the difference in cost would be if you didn't have the piers, but you interpreted the Commission as saying, "We want to know what it costs you to handle on your piers today and we want to know what the cost is of handling whatever number of cars you now handle on your limited team tracks." That is the way you interpreted it? Isn't it?

A. That is correct.

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Mr. LaRoe: That is all. Thank you.
Exam. Walsh: Any further questions on cross examination?
Mr. Kaplan: May I ask a question.
Exam. Walsh: Mr. Kaplan.

Cross examination.

By Mr. Kaplan:

Q. On page 1 of Exhibit 146, the last column, bottom line, [fol. 1680] which you originally had at 46 cents, is now what figure?
A. Well, Mr. Kaplan, what I have done——

Exam. Walsh: He made that $45.79.
The Witness: Yes.

By Mr. Kaplan:

Q. Now, may I ask you whether or not you have made any study of what the Erie Railroad receives from any sources to compensate them for the $45.79?
A. Well, these particular items of expense—no, I haven't compared this with any revenue, if that is what you mean, that we have received with respect to these particular items.
Q. So that for all we know the revenue that is received by the Erie Railroad in return for this supposed expenditure of $4.79, may be $80, $90, or even a hundred dollars?
A. Well, I wouldn't quite go to those figures,—no, sir. Based on my judgment and the figures I have seen——
Q. Regardless of your judgment I am talking about any statistical figures that may have been prepared by you or by anyone else in your department, you have no way of telling what is received?
A. No. I have made no allocation of any revenues against these particular items of expense which are included in this particular exhibit. You understand, of course, this does not include the unloading costs.

Q. I understand that.

[fol. 1681] Exam. Walsh: Any further questions of the witness?

(No response)

Exam. Walsh: Do you offer 146 and 147?

Mr. Smith: Yes.

Exam. Walsh: Exhibits 146 and 147, Witness Root, have been received in evidence, but the receipt will show that they have been objected to by Mr. LaRoe.

Mr. Loos: And the others.

Exam. Walsh: And others.

Mr. Wells: May I ask one question at this time?

Exam. Walsh: All right.

Cross examination.

By Mr. Wells:

Q. Mr. Root, in the computation of the unit cost per loaded car, might it not be that a different volume of number of cars in a particular period of study would change completely the original cost that would be shown?

A. To the extent that our study is based on time studies, which is a large part of our study, no, I don't believe that volume would have any material effect at all on our study; any increase or decrease in volume. Does that answer your question?

Q. Well, doesn't the number of cars that you took into consideration determine the amount of unit cost developed by your exhibit?

A. Not on our floating marine study or on our yard studies. It does not, because that is based on time studies, and I do not think—I am quite positive in my own mind—that [fol. 1682] volume would have any material effect on that time study, or on those time studies.

Where there are costs based on annual cost, and divided by annual number of cars, volume could have some effect.

Q. Well, your study then as to yard costs and floatage costs, and so forth, was determined on the basis of engine hours in a yard.

A. And particular types of service.

Q. And tug hours, and so forth, in the floating service?

A. That is correct.

Q. And then you applied that to the number of those units that was determined for the particular study?

A. That is correct.

Q. So that if there was a different number of cars in-

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volved in a particular time, wouldn't you have a different result?

A. We would have a different total result. We wouldn't have a different average result.

Q. Well, if you had a float, for example, that took a certain period of time and there were ten cars on it, or another instance there was a float that had 8 cars or another 12 cars, wouldn't you have a different resulting unit cost per car?

A. On our car float expense we would have, yes.

Q. That is a big item here in your computation, isn't it?

A. Our floating costs amount to $11.28 out of the $45.79 at Duane Street, yes.

[fol. 1683] Mr. Wells: Thank you. That is all.

Exam. Walsh: Any further questions of this witness?

Mr. Loos: I understand when he is recalled, I may ask some more questions?

Exam. Walsh: All right.

Are you familiar with the physical set-up of the Duane Street piers? Piers 19, 20, and 21?

The Witness: Yes, sir.

Exam. Walsh: Does the Erie operate those piers as its terminal facilities in New York?

The Witness: That is a part of our terminal facilities in New York, yes.

Exam. Walsh: I understand that this record shows that those piers are owned by the City of New York?

The Witness: That is correct.

Exam. Walsh: And the Erie and the other carriers lease those piers from the City of New York; is that correct?

The Witness: The other carriers lease other piers; we lease these particular piers.

Exam. Walsh: That is right.

Do you occupy the pier, the part you have leased from the City of New York, as your terminal facility exclusively?

What I mean is, has anybody else any right in there other than a shipper, or receiver of freight?

[fol. 1684] The Witness: Well, no; of course, on Pier 19 I believe we do have a sub-lease of some property there from someone else.

Exam. Walsh: But it is your property?

The Witness: That is right.

Exam. Walsh: So that no other parties have a right to use the terminal facilities of these piers without the consent of the Erie Railroad and the other carriers at their respective piers?

The Witness: As far as the Erie is concerned, that is correct, yes.

Exam. Walsh: That is all.

Cross examination.

By Mr. LaRoe:

Q. There wouldn't be any doubt that those piers constitute your principal public delivery stations for freight in Manhattan Island?

A. I think in volume of cars that is correct, yes.

Mr. LaRoe: That is all.

Exam. Walsh: Any redirect?

Mr. Smith: No, sir.

Exam. Walsh: Witness is excused.

Mr. Loos: Subject to recall.

(Witness temporarily excused)

Exam. Walsh: You have testified previously in this case?

Mr. Heywood: Yes, sir.

[fol. 1685] Mr. Miller: Mr. Heywood's exhibit and testimony have been distributed, Mr. Examiner.

The testimony includes a statement of his qualifications.

Exam. Walsh: The next exhibit will be 148; and the next exhibit will be 149.

Mr. Miller: I believe, Mr. Examiner, we have identified the New York study as Exhibit 148?

Exam. Walsh: That is correct.

Mr. Miller: And the Philadelphia exhibit as Exhibit 149?

Exam. Walsh: 149.

Proceed.

(Respondents' Exhibits Nos. 148 and 148, Witness Heywood, were marked for identification.)

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J. L. Heywood was recalled, having been previously sworn, testified as follows:

Redirect examination.

By Mr. Miller:

Q. Will you state your name and business connection?
A. J. L. Heywood, Assistant Comptroller of the Pennsylvania Railroad, Philadelphia, Pennsylvania.

Mr. Miller: Mr. Heywood, Mr. Examiner has prepared a statement which was distributed with his two exhibits, which I think is complete in itself.
[fol. 1686] Exam. Walsh: All right.
Mr. Miller: In order to make the record perfectly clear, Mr. Heywood's exhibits include a 36-page study of team track and station costs on perishables delivered at New York, and a 21-page study of similar costs at Philadelphia. Those two exhibits have been identified respectively as exhibits 148 and 149.
That is all on direct, Mr. Examiner.
The Witness: My name is J. L. Heywood and my present position, which I have occupied for eight years, is Assistant Comptroller of The Pennsylvania Railroad Company. My duties include direct supervision over the compilation of statistics and cost studies. I was Assistant to the Comptroller for the previous three and one-half years and prior to that for nine years was directly engaged in the analysis and preparation of cost studies principally in connection with rate cases. I have been employed in the Accounting Department of The Pennsylvania Railroad Comany for 35 years.
I wish to present exhibits showing terminal costs at New York and Philadelphia which are entitled I. & S. Docket 5500, Unloading Charges, Fruits and Vegetables at Piers 27 and 28, New York, N. Y.; 37th Street, New York, N. Y.; and Henderson Street, Jersey City, N. J. (Ballground) and New Greenwich Classification, Pay Yards and Produce Terminal, Philadelphia, Pennsylvania.
The purpose of these exhibits is to show the cost of terminal services performed in handling a loaded car of per-
[fol. 1687] ishable freight for delivery, both at New York and Philadelphia, also the methods used in developing the

costs, using the month of December 1950 as the study month.

Results are further separated in order to show differences in costs at the piers and team tracks on Manhattan Island and the team tracks at Henderson Street in Jersey City, known as the Ballground and also in Philadelphia, between Pennsylvania Produce Terminal and the team tracks, which are adjacent thereto.

With respect to the New York Study, Page 1 shows the summary of costs per loaded car at the piers, 37th Street, N. Y., and Henderson Street, Jersey City, which amounts to $122.73, $73.57 and $58.50 respectively.

Pages 2 and 3 show the yard costs by primary expense accounts with overhead, taxes and 6% return on depreciated investment on basis of number of cars handled in and out of the yard.

Page 4 shows a summary of these costs on a loaded car basis. Pages 5 to 15, inclusive, show the supporting detail of the primary expense and investment accounts, taxes and the number of cars handled.

The Harsimus Cove Yard costs developed represent the average per loaded car within the confines of that yard. The study covers only those Harsimus Cove Yard movements and costs and directly associated with yard classification, float bridge and lighterage pier switching, also station and [fol. 1688] industry switching to those points immediately adjacent to the yard.

For example, Hudson Street Branch movements serving Colgate's and other industries and the movements between the Jersey City Terminal and Waldo Avenue Yard were not included in the yard engine hours or costs. Operations, maintenance, and investment costs at Lighterage piers and Henderson Street Freight Station, which are located in the yard area, were also eliminated.

Page 16 is a summary of Float Bridge costs in total at Harsimus Cove Yard, Jersey City and 37th Street, N. Y. and per loaded car supported with further detail on the pages enumerated thereon.

Pages 19 and 20 are a summary of the floatage costs in total and per loaded car with supporting detail on pages 21 to 30, inclusive.

On pages 31 and 32 there appears the station costs at Piers 27 and 28, Henderson Street (Ballground) and 37th Street

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in total and per loaded car with supporting detail on pages 33 to 36, inclusive.

All of the larger expenses were directly assignable to the studied operations. For example, wages of yard crews, yardmasters, bridgemen, etc., and handling and other station expenses the most of which are paid to contractors, also pier rental paid to the City of New York, are actual expenses incurred in December 1950.

In connection with the allocation of expenses on unit ratio [fol. 1689] bases, the accounts and service units on which the rates and ratios were based were New York Division statistics. All of the operations included in this study are a part of New York Division.

Subsequent to the preparation of the study, certain yard employees were awarded an increase of 12½¢ per hour with negotiations continuing which may result in further increases. While this study does not include this increase, the cost was retroactive to October 1, 1950 and was paid in February 1951.

Also, subsequent to the preparation of the study, non-operating employees received an increase of 12½¢ per hour effective February 1, 1951, with provision for additional increases subject to increases in the cost of living index.

Effective April 1, 1951 the contract under which the perishable traffic is handled at the pier was changed to reflect an increase of 12½¢ per hour in the wages of the stevedores. None of these increases was included in the cost study.

The next exhibit is described "Unloading Charges on Fruits and Vegetables—New Greenwich Classification and Pay Yards and Produce Terminal, Philadelphia, Pa., December 1950."

Page 1 shows total cost per loaded car unloaded in the terminal of $109.36 of which yard costs amounted to $14.68 and station costs amounted to $94.68 while the cost per car on team track amounted to $39.64 of which $14.68 was yard costs and team track costs of $24.96.

[fol. 1690] Pages 2 to 4, inclusive, detail by primary accounts the operating expenses, taxes, 6% return on depreciated investment and the cost per car handled separately for the New Greenwich Yard Classification and the switching at Pay Yard. Page 5 shows the number of Perishable Terminal Cars handled at each of the yards mentioned, the

total yard costs attributable to those cars and the yard costs per loaded Perishable Terminal car.

Pages 6 to 14, inclusive, furnish supporting data for the earlier pages.

Most cars to and from the Produce Terminal are classified in New Greenwich Yard over Greenwich Hump. New Greenwich Classification Crew and other yard expenses were determined and these expenses were divided by the number of cars classified.

The resultant cost per car was applied to each loaded and empty Perishable Terminal car handled over the Hump. After classification, cars for the Produce Terminal are switching to Pay Yard together with cars for the adjacent South Philadelphia Freight Agency and for two small private sidings.

A few Perishable Terminal Cars are taken directly into Pay Yard over tracks located north of the New Greenwich Yard and no classification expense has been included for such cars.

The crew and other yard expenses at Pay Yard covering the switching for the Produce Terminal, the South Philadelphia Freight Agency, and the two private sidings were computed and divided by the total number of cars into and out of those points. The resultant cost per car was applied [fol. 1691] to each loaded and empty car handled at the Produce Terminal, except reconsigned cars.

The New Greenwich Classification costs and the Pay Yard costs thus determined for Perishable Terminal cars were then totaled and divided by the number of loaded perishable cars handled at the Terminal to produce the yard cost per loaded car of $14.68.

Station costs are shown starting at Page 15, the costs per loaded perishable car unloaded in the terminal of $94.68 and at the team track of $24.96 appearing on Page 16. The supporting information is shown on Pages 17 to 21, inclusive. All of the larger station expenses are directly assignable to the studied operations.

In computing expenses based on unit rates or ratio bases Philadelphia Terminal Division expenses were used where applicable and expenses for Eastern Region, which includes Philadelphia Terminal Division, where applicable.

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No expense on account of the wage increases, mentioned previously, has been included in this study.

Exam. Walsh: That conclude your testimony on direct?

The Witness: Yes.

Exam Walsh: Cross examination.

Cross examination.

By Mr. LaRoe:

Q. I don't expect to go into each detail regarding your study, but I want to straigthen out some big points if I can. [fol. 1692] You would agree with the previous witness, I take it, that you interpreted the Commission's instructions as calling merely for a study of present cost of handling cars at team tracks and at piers, and you made no attempt to study or determine what the cost would be if you should acquire the land necessary to handle your fruit and vegetable traffic if the piers were not there?

A. That is right. We did not.

Q. Now, I must be entirely frank with you and say that we are shocked by your figures.

Can you explain, for example, or do you have enough knowledge of the other railroad operations or figures to explain why the team track costs on Manhattan to the New York Central is $22.30 and your cost in Jersey City is $58.50?

A. You mean what is the difference?

Q. No. The difference is $36.

A. I know that but you want me to explain the difference?

Q. Yes.

A. You will have to have the New York Central man if you want that. I can't explain it.

Q. In other words, you would not be able, for example, to explain why the Erie team track cost is $10.74 on Manhattan and yours is $58 just across the river?

A. No, sir.

[fol. 1693] Q. Those figures shock us. Would you be able to explain why the Erie shows a cost of $46 for pier operation, plus the unloading, whereas you show $122, including the unloading? Those figures are almost equally shocking.

A. The only explanation I have to that is I prepared a number of exhibits in previous cases on this same formula

and they are within confines of the original figures we prepared as far back as 1932.

Q. Well, if the figures that I have given them are correct, isn't there something rotten in Denmark somewhere? How could it be possible for an Erie team track cost on Manhattan to be ten dollars and yours across the river to be fifty-eight?

A. I don't know. That is what our cost is.

Mr. LaRoe: That is all.

Thank you.

Exam. Walsh: Any further questions?

Mr. Matson: Just a few questions for clarification, Mr. Heywood, of your Exhibit 148.

Cross examination.

By. Mr. Matson:

Q. On page 4 of your exhibit, under the column headed "Pier 27-28," you show the total number of cars perishable, 3,894, and then down in the middle of the page you show under the same column 2,076 cars of loaded perishables.

Now, following along those same two lines, the total number of cars of perishables in the other columns is double the number in the lower line.

[fol. 1694] Can you explain why that is not true of Pier 27 and 28?

A. Well, some of those cars in the first place at Piers 27 and 28 are shuttled back and forth to hold in the hold track at Harsimus Cove.

Q. They are counted twice?

A. Up in the upper one.

Q. I don't follow you on that. Under all the other columns the figure opposite the heading "Total cars perishable" is exactly double the figure for loaded cars, perishable.

A. That is true of Harsimus Cove because you have got the one line as loaded cars and the other is the total cars in and out and it isn't always true that all the loaded cars that went into Pier 28 come out empty. Some of them are loaded when they come out of there.

Q. Do you mean to say that cars delivered at 37th Street invariably are returned empty?

A. That is correct.

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Q. And so with respect to Henderson Street?
A. Yes.
Q. And Ballground yard, Henderson Street?
A. That is correct.

Mr. LaRoe: I neglected to object to this exhibit. Can we have an understanding that my objection goes to all railroad exhibits which proceed on the same assumption that Mr. Root did?

[fol. 1695] Exam. Walsh: The record will so show.

Mr. Loos: We all join.

Mr. Fitzgerald: The record will show that the Philadelphia interests, which not only have concurred in Mr. LaRoe's original objection, expressly and specifically join in the objection as to Mr. Heywood's Exhibit No. 149.

Exam. Walsh: That will come up later. All right.

By Mr. Matson:

Q. Now, in your explanation of the difference of those two figures on page 4, that would also apply to the same figures on page 16, I presume?
A. Yes. They are the identical same figures. That is in so far as cars are concerned we are speaking of now.

Q. Does that mean that you had 129 loads returning from the Manhattan piers? What happened to those cars? Were they diverted after they were taken over there for delivery?
A. Some of them may have been diverted. Some may have been loaded there. There are times when we will load perishables on there. Such as bananas have been loaded there.

Q. Now, if you will jump over to page 32, you show there a total number of cars inbound 1841, and outbound 3. I can't reconcile those two figures with the explanation which was just given on pages 4, 16, and I presume also page 20.
A. Well, we are down now on page 32 to the station cost, and the 1841 inbound and 3 outbound is exactly what the station accounted for, from a station cost standpoint.
[fol. 1696] The others were from the float standpoint and the yard standpoint over the float bridge.

Q. Do you mean some of those cars, those two thousand

76 loaded cars of perishables had no station cost after they get over to Pier 27 and 28?

A. They may be returned too late for unloading at that market, returned to Harsimus Cove, and again may never hit within that period and then also there is another element there of an overlap, where we may count the cars out of the yard at ten minutes to twelve, of a night——

Exam. Walsh: You mean at Harsimus?

The Witness: At Harsimus, the next day the agency will get it into his account so there is no lap in the beginning at the end of the month.

By Mr. Matson:

Q. This is only for clarification.

A. I understand.

Q. On page 33 you have an item near the bottom of the page of $6,740 for one year's premium on insurance, and that is for floating, ice, and collusion, and so forth, insurance—and I would like to ask you as to that why that is all charged to the Piers 27 and 28 and none of it allocated to 37th Street, for example.

A. For the simple reason that none of it was chargeable out to that service; none to Henderson Street you wouldn't have. That is natural but as to 37th Street there was noth-[fol. 1697] ing set aside on that. The insurance department claims that the collision they have, and ice, and so forth, is strictly on Piers 27 and 28.

Q. You mean you have an insurance policy which covers the movement to Piers 27 and 28 but does not have a similar policy covering the movement to 37th Street?

A. You may call it a policy if you wish. Of course, we insure through our own fund.

Q. It is a matter of self insurance by the Pennsylvania Railroad?

A. That is right.

Q. And you have set up no similar account for 37th Street?

A. That is correct, when we checked into the insurance department to give us the insurance on, any insurance they had on the collison, ice, and so forth, we were informed that it only was applicable to 27 and 28 pier and nothing to 37th Street.

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If we had we would have had it in there.

Q. I am not questioning the accuracy. I am just asking for clarification of this anomalous situation here.

If that is all the explanation that is all I have. Thank you.

Cross-examination.

By Mr. Augello:

Q. Would you elaborate a little more about your statement that some of the cars might have come over too late for the market and that is the reason they weren't unloaded.

A. I gave two reasons there: Too late for the market; or the market wasn't right and they told us to take them [fol. 1698] back and hold, due to the end of the month and the beginning of the month over lap as to the date that it would leave the Harsimus Cove and arrive at the Pier.

Q. Let's restrict ourselves to your first reason about the cars coming over too late for the market. Would that be due to the fact that the train arrived too late at Harsimus Cove to enable it to get over to the Pier on Manhattan side in time for the market?

A. Not necessarily. They might have changed their mind when they got over there, that it wasn't the right market today for that product.

Q. You know, don't you, that in some cases the railroad brings these cars in late?

A. We don't have a hundred per cent on time schedule, no; certainly not.

Q. And while the cars were ordered for the piers for a specific market, the fact that the train arrived late missed that day's market and that is the reason the cars were brought back to Jersey City after being taken over to the piers in the first place?

A. Did you say I know that?

Q. Did you know that?

A. I think that is the statement I made. I think it was clear enough to say it was cars to the market not being right for them. I didn't say necessarily that we held it up. I am not going to blame it all on us. You are trying to [fol. 1699] make me say it is due to our train being late, that is why the market wasn't right.

Q. There are cases where the train is late that brings these cars over to the pier, too late for the market; is that so?

A. I don't care to subscribe to that wholeheartedly,—no.

Q. You haven't any records here to show those conditions?

A. No; I have nothing here to show those conditions.

Mr. Augello: That is all.

Cross-examination.

By Mr. Wells:

Q. Did I understand you to say in your prepared statement you had been in the accounting department of the Pennsylvania for 35 years?

A. That is what it says, yes. It is 36 now.

Q. I understand you to say also that the first time you prepared any cost study in connection with these piers and perishables was about 1932; is that right?

A. Yes, sir, that is right.

Q. Did you know a Mr. J. J. Neal of the Pennsylvania Railroad Accounting Department?

A. Yes.

Q. Did you work under him?

A. No, sir.

Q. Do you know that he testified on the 24th day of April, 1926, in the line-haul citrus freight case, Docket 16939, with respect to station and unloading cost at the piers in New [fol. 1700] York City on Florida Citrus Fruit?

A. Do you want to know whether I knew he testified?

Q. Yes.

A. No, sir.

Q. You did not investigate, then, to determine that in the particular situation that you had under study here, in 1926 a study was made by him in which he testified at page 1527 of the record, "The cost as shown on page 1 of the exhibit is 3392 per car, or $2.60 per ton."

A. No, sir.

Mr. LaRoe: How much per ton?

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Mr. Wells: $2.60.
The Witness: I don't know anything about his testimony.

By Mr. Wells:

Q. And that the average loading is 13.05 tons for fruits and vegetables covering shipments from Atlantic Coast Line Railroad, Seaboard Airline Railway, and Florida East Coast Railway for the period September 1, 1924 to August 31, 1925 as per exhibit No. 36, sheet 1, Witness W. D. McKay, in Docket 16939; do you know anything about that?

A. No, sir.

Q. And you made no investigation whatever to determine either the methods used by your Mr. Neal, who was the witness of the Pennsylvania Railroad in that line haul rate case, nor as to the amounts for the respective items about which you are testifying here in this proceeding, is that right?

[fol. 1701] A. That is right.

Q. Did you make any time study or any other particular study of operations in the month of December 1950?

A. Only in reference to the tug and float time.

Q. What study was made with respect to that?

A. We went to the tug logs and took off all the information to show the movements to Pier 27, 28 and 29, and to 37th Street and then accumulated the total tug hours in that period.

Q. Well, in other words, you didn't make any study at all during that period.

After the period had elapsed and terminated, you then went back to the records to try to develop some information about it, is that correct?

A. You mean did we put men on the tugs? Is that what you are referring to, Mr. Wells?

Mr. Wells: I will ask the reporter to read the question.

(Question read.)

The Witness: Not entirely,—no. We worked on the tug logs as time went along in the month of December.

By Mr. Wells:

Q. Well, will you describe in detail and accurately just what study, if any, you made during the month and in the month of December, 1950?

A. We made a study of the tug logs to determine the time of the tugs, taking the floats to pier 27 and 28 and to 37th Street, and then also accumulated the total tug hours for the period under study.

[fol. 1702] Q. From the examination of the log?

A. Yes.

Q. And that is the entire study that was made in connection with data underlying your exhibit; is that true?

A. In so far as time study was concerned, yes.

Q. Now, I want to understand if I may about page 32 of your exhibit No. 148, which I don't understand.

You show there a total of 1841 inbound perishable cars; is that right.

A. That is right.

Q. To piers 27 and 28, New York City; and at another point you have shown 2,076 loaded cars and if I understood your answers to Mr. Matson a few minutes ago you said there were two reasons that might have caused that difference, one being that some of the cars came over to the pier on the float and were not unloaded and then went back to the yard at Harsimus Cove and the other being that there might have been an overlap at the beginning or end of a month; am I correct in my understanding?

A. That is what I said,—yes.

Q. Will you tell us how many, if any, of the cars in the 2,076 number in the month of December were brought to Piers 27 and 28 and not unloaded but carried back to Harsimus Cove Yards?

A. No.

I don't have that here.

[fol. 1703] Q. Do you know or did you ascertain that there were any included in 2,076 figure that were actually carried back loaded to Harsimus Cove Yard?

A. Yes. There were some cars carried back.

Q. Will you give us that figure, please?

A. We will try to get that figure, yes.

Q. You don't have that with you, sir?

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A. No, sir. I do not.

Exam. Walsh: Will you furnish that?

The Witness: I said I would,—yes.

Exam. Walsh: How long do you want for that?

The Witness: Give me a few minutes after I get off here and I will give you some idea.

Exam. Walsh: Will you do it here today?

The Witness: Yes.

Mr. Wells: I don't want your guess about it or judgment figure on it. I want your exact information, please, sir.

Mr. Miller: He will give you the exact information, Mr. Wells.

By Mr. Wells:

Q. I wonder if you would look at sheet 21, please.

You have referred to, in several places during your exhibits, the percentage of .287; and will you tell us how that percentage amount was computed?

A. That is the percentage of dispatchments of perishable cars to, as I recall—I might have to go back into the detail on that.

[fol. 1704] But it is my recollection of the perishable cars to 37th Street as compared with the total dispatchments.

Q. Did you divide ten by 1,034.81?

A. I would say here, yes, until I looked at the rough papers.

Q. Now, in getting your figure 12.927, what did you divide?

A. I specifically invite your attention to the fact that 451 divided by 481 does not give the amount you gave. I will ask the privilege of looking at the rough papers if I can do that.

Q. I would be happy for you to do that. Where did you get the 8.93 per cent which you have shown on that sheet as the perishable proportion?

A. That would be on the basis of the station operation, I would say. At the same time as I look up that 287 I will give you the detail on the 893, the base figures that made that percentage.

Q. Thank you, sir.

Now your total operating expense at the top of that

sheet that you used in connection with the cost of repairs to the boat master's office for three years totalled $3330; is that right?

A. That is right.

Q. And then you made an arbitrary assignment to Harper's terminal in a differing percentage for each of those three years, did you, sir?

A. Yes, sir.

Q. As a matter of fact, the $3110.78 then, as the result of [fol. 1705] that application, seems to be 93.698 per cent of the above.

Would that result from the *wait*ing of the expenses in each of those three years?

A. Yes.

Each year, the percents were applied to each individual year.

Q. And how did you get the material and labor costs separately then?

Did you do that?

A. That is based on our master carpenter, and master mechanic giving us the information, in part actually from material slips and bills from outside concerns who might have done the work rather than our own people and when it came to our own people there are times when he has to use some estimate because of him working more than one place within a given time and no separation is made of that in detail on our railroad.

Q. Well, in other words you- account 227 then does not have it separated as to material and labor; is that right?

A. No. It was made after we took off the material slips or time slips, and which we had available as I say for the bills from the outside concerns.

There are occasions when we have outside concerns do some of this work.

Q. Well, did you take that for the year 1950 or for each of the three years?

A. Yes each of the three years.

[fol. 1706] Q. And whatever the item was, if it was from an outside concern or something charged out from your own accounts——

A. It would be in the year in which it was charged out.

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Q. Well was there the same relation between labor and materials making up the totals for each of those years?

A. I wouldn't say so. That would be rather accidental possibly if it was that way.

Q. Then if you applied your percentages in each of the years to each of those amounts you would give different results from what you did, wouldn't you?

A. You are speaking of the 92.4 and the 92.6?

Q. Yes.

A. That is simply to get the figure of the total to the Harbor Terminal part. The boat master's office also has some other figures there that he considers as not applicable to the harbor terminal service.

Q. Is the dividing of the 3110.78, which is the only figure I understood you to say was obtained by the application of those percentages, and then is the division of that between the 999.88 for material and the amount there for labor, simply a guess?

A. No.

I didn't say that. I said that where material and time slips were available they were used. If we had a bill from an outside concern that would show labor and material it [fol. 1707] was taken off but I also said there was occasion when the master carpenter, and so forth, had men working, he would have to make some arbitrary split because of them working on different sections of the piers over there, maybe at the time he could be working on the "bos-master" which as I recall is on Pier "H". He could have hit "K" and "L" all within a given time of a day we will say, or something, and he would have to take some basis of saying so much time was spent at Pier "H" and so forth.

Q. How did you divide the 311078 as between material and labor?

A. I guess I can't explain it to you. I think I have tried to as far as I can and if it is necessary I will try to put it down in ABC order on a piece of paper.

Q. Thank you, if you will.

Mr. Miller: What do you mean?

Mr. Wells: Well I would like to have an answer from the witness on the record that is understandable——

Mr. Miller: It is undertandable to me.

Mr. Wells: It is not to me. I am sorry.

Mr. Miller: What is it you don't understand?

Mr. Wells: I want to know how he divides the 3,110.78 as to material and labor.

Mr. Miller: The material is shown on the sheet, divided between 999.88 and 2,110.09. What more do you want?

Mr. Wells: I want to know how he arrived at those amounts.

[fol. 1708] Mr. Miller: He has explained that he looked over all the bills that were available; that where the work was directly assignable to these items, he took the amounts off the bills, and off the pay slips. He said that some of the work was performed not only assignable to this item, but some of the work was performed on other projects, and as to that portion of the work where the pay slips and the material slips were not directly assignable to this item, he asked the master carpenter and the other bosses how it should be assigned. They told him how to assign it and that resulted in these figures.

Mr. Wells: Did you make that sort of an estimate on each of the years and then add up to arrive, for example, at the amount of $999.88 for the material cost average for the three years?

The Witness: Yes. That is my understanding as the master carpenter took it year by year, to give the best figure he could possibly ascertain, from in part, as I said, judgment.

By Mr. Wells:

Q. And then when you added up the materials, items assigned and apportioned by the method you speak about, you deducted from the 3110.78 and called the balance labor; is that right?

A. No. I didn't say that.

I haven't said that.

Q. Well, how did you obtain the labor item?

A. The record shows.

Q. Well, will you provide the working papers on that so [fol. 1709] that I can see the detail, please, sir?

A. I don't know. We will let counsel settle whether I will provide them or not.

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Mr. Wells: Well if I correctly understood, at the present hearing conference some time ago we were advised that the working papers would be available.

The Witness: In Philadelphia.

Mr. Wells: At the hearing.

The Witness: If that is so I haven't been apprized of that fact.

Mr. Wells: In other words, you do not have your working papers here at this hearing. Is that your statement, Mr. Heywood?

The Witness: That is my statement.

Mr. Loos: Mr. Examiner, if I may interrupt——

Exam. Walsh: Does that conclude your testimony?

Mr. Wells: No, sir.

Mr. Loos: If I may interrupt at this point I would like the record to show that I wrote to Mr. Miller some days ago saying that I assumed the working papers would be here at this hearing.

Did you receive that letter, Mr. Miller.

Mr. Miller: I did.

Mr. Loos: Did you determine not to bring the working papers to this hearing?

Mr. Miller: Yes.

[fol. 1710] Mr. Loos: Mr. Examiner, I move this hearing recess until we have the working papers here.

Exam. Walsh: Overruled.

Proceed.

Mr. Miller: We are perfectly willing to make those working papers available. Mr. Heywood, they are of course pretty bulky and it was not my thought that protestants would actually want to review them.

Now, if the protestants desire, we will have the working papers here as soon as we can get them brought over from Philadelphia, and they certainly should be here tomorrow.

Mr. Loos: Mr. Examiner——

Mr. Miller: I will arrange to have those papers made available and if you have further questions of Mr. Heywood, after you have reviewed them, Mr. Heywood will be supplied.

Mr. Loos: Mr. Examiner, I would like to make the record clear that I made it perfectly clear in my letter to Mr. Miller that I was anxious to have the working papers here.

There certainly couldn't have been any misunderstanding of my letter.

Exam. Walsh: Mr. Miller admitted that. He received your letter. He understood it that way. He could not bring the working papers here. He now offers to have them here tomorrow morning.

Mr. Wells: Then, may we defer additional cross examina-
[fol. 1711] tion of Mr. Heywood until we have examined them?

Exam. Walsh: Until tomorrow morning.

Mr. Donadio: I wonder if I might propose a point? My understanding of this pre-hearing conference with respect to the making available the working papers is that they should have been made available to anybody who wanted to see them prior to the hearing and I had no idea that it was expected that all these bulky working papers should be brought to the hearing. That is my understanding of the agreement, the understanding at the prehearing conference. If that is incorrect I would like to know it.

Exam. Walsh: Then, am I correct that it is your understanding that the working papers are available prior to the hearing to any person who desired to inspect them?

Mr. Donadio: That is correct.

Exam. Walsh: And that would mean that somebody from Florida would go to the Baltimore and Ohio Railroad headquarters at Baltimore, and then go to the Pennsylvania Railroad headquarters at Philadelphia and come up to the Erie—is it at Cleveland?

Mr. Smith: That is correct.

Exam. Walsh: And the New York Central here at New York, either one, if they were interested, or the Lehigh Valley.

Mr. Miller: That was our arrangement at the pre-hearing conference.

Exam. Walsh: I want the record to be straight on it.

[fol. 1712] Mr. Donadio: That is correct.

Mr. Wells: That is not my understanding of it, because I have very clearly in my memory a discussion, whether on or off the record at that time, I don't know at the moment, but with respect to the place of the hearing and whether there would be adequate facilities at the place of the hear-

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ing for lodging the working papers where they would be available for our examination.

Mr. Loos: Mr. Examiner, I would like to say also for the record that while it was my understanding that the working papers would be available at the offices of the respective railroads for inspection prior to the hearing, they were also to be available at the hearing.

Now, I took advantage of the opportunity to go to Cleveland and inspect the working papers of Mr. Root.

I intended to take advantage of the opportunity of going to Philadelphia and inspect the working papers underlying the exhibit of Mr. Heywood and I expected to do that last week but illness in my family prevented my absence from Washington and I so wrote to Mr. Miller to remind him of what I understood was the understanding that the working papers were also to be available at the hearing.

Exam. Walsh: Well, Mr. Miller you are agreeable to have those papers here tomorrow?

Mr. Miller: When can you have them over here?

[fol. 1713] The Witness: I—no one can have all working papers here. You are going to have papers that you worked-up figures to put in the exhibit but there are certain basic records that are still back on the ground. You don't cart those back anywheres to work. You work on them and get done with them.

Mr. Miller: What time can you have the transportable records here?

The Witness: Any time you want them tomorrow morning.

Mr. Miller: We will have them here at the opening of the hearing tomorrow.

Exam. Walsh: You can have them here at the opening of the hearing tomorrow morning. Proceed, Mr. Wells, with the cross examination.

Mr. Wells: I understood, Mr. Examiner, it was agreeable to defer it until after examining the papers.

Exam. Walsh: Does anybody else desire to examine?

Mr. Miller: I think we ought to complete as much of it as we can. Let's push it forward as far as possible.

Exam. Walsh: Cross examination not connected with the papers?

Mr. Loos: I have some questions if it is my turn.

Exam. Walsh: Proceed. And I might suggest at this time that it will be helpful if the cross examination is conducted by the parties in one particular sequence. Now, Mr. LaRoe starts first, and then somebody else follows.

Mr. Loos: We will go around the table. Give me the last [fol. 1714] word.

Exam. Walsh: And make an effort to conduct your cross examination at one time if possible. That doesn't mean that the Examiner will shut anybody out to just one time, but don't try to come back if you can avoid it.

Cross-examination.

By Mr. Loos:

Q. Will you please refer to page 4 of your exhibit, Mr. Heywood?

I note at the bottom of that page you have added together in a column headed by the word "Total" the items shown in the three preceding columns, one of which is headed "Cost per loaded car at Pier 27 and 28" and the other "Cost per loaded car at Henderson Street" and the other "The cost per loaded car at 37th Street."

And taking the first line, for example, you have added $6.55, and $6.98 and $6.98, and come to a total of $20.51.

What is the significance of that total?

A. That is the total of the cost of handling the cars for the three different destination points, 27 and 28, Henderson St., and 37th Street in so far as Harsimus Cove was concerned.

Q. The cost of handling three different cars?

A. No. Handling cars at the different places I say, for delivery at Henderson Street, 37th Street and Pier 27, 28 and 29. The Harsimus Cove end of it that is. When you come over to the last two columns, if I may get over there at [fol. 1715] the moment, it might clarify it.

That is the cost under Henderson Street at the Ballground and this is the cost at 27th Street when you get into the team track.

Exam. Walsh: By this, you mean 526?

The Witness: Yes. In New York.

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By Mr. Loos:

Q. Is the $5.51 the cost per car?

A. The $5.51 is the cost of handling—the significance there don't mean a whole lot, I will agree because we are only trying to get at Pier 27, 28 and 29, Henderson Street and 27th Street differently but it did show the cost in Harsimus Cove to handle the cars to the three points is $20.51, a car, average.

Q. $20.51 for one car?

A. That is right.

Q. Which place would that one car be going to?

A. Either one of the three places.

Q. I thought you said to go to Pier 27 and 28 it costs $6.55 per car?

A. That is right, and $6.98 at Henderson Street, and $6.98——

Q. How does it cost $20.51 for any car to go any place?

A. That is total cost at Harsimus Cove for handling a car.

Q. Do you mean you handle the car first for 27 and 28, then handle the same car for the Henderson Street, Jersey City and then you handle the same car for 37th Street, New York, so that you compute, come out with a total cost of $20.50 for that one car?

[fol. 1716] A. I would say if it would clear it up, may we strike that column total out of there?

Mr. Loos: I would be agreeable to that because to me it has no significance whatever.

The Witness: O. K. it is out.

By Mr. Loos:

Q. Now, Mr. Heywood, you indicated in your statement I believe that you had filed a number of exhibits in other cases with reference to costs?

A. Yes.

Q. And are those exhibits confined to terminal costs, such as you have developed here or do they cover costs of all kinds?

A. Costs of all kinds but there are some in particular that refer to cost, developing costs to the piers, 27 and 28.

Q. Is it fair to say that most of the cost exhibits prepared

by the Pennsylvania Railroad and introduced in hearings in cases before the I. C. C., are prepared under your supervision?

A. It is.

Q. How long has that been true?

A. Since about—I think I stated in the neighborhood of 1930 to '32, within that territory of two years it started.

Q. Now, Mr. Heywood, Mr. LaRoe indicated in his questions that the costs shown in your exhibits were quite shocking to the protestants in this case.

Have you, in your experience, found that your costs exhibits have been quite shocking to other parties in other proceedings?

[fol. 1717] A. I might add that they were quite shocking to the Southern Carriers until they came up and checked and I heard no criticism after that.

Q. You didn't see any criticism in the record after that?

A. No. The record doesn't show any.

Q. Have you read the briefs in the Divisions case?

A. Yes. I have read all but a few of them.

Q. Have you noticed any criti-sm in the briefs with respect to your costs?

A. They criticized them but they didn't stand. There was nothing substantial. They sent men up here on three different occasions and left and I saw nothing effecting the final figure from it.

Q. But you will agree that they were quite shocked by your figures?

A. I didn't say they were quite shocked. I said perhaps they were shocked. I don't know.

Q. Perhaps they were shocked?

A. Yes.

Q. You say that you have been making these cost studies in the same way, back to 1932. By that did you mean that you were making these terminal cost studies at Piers 27 and 28 and these team tracks at New York in the same way?

A. No. I didn't say that. I said to Pier 27 and 28.

Q. And how about the team tracks?

[fol. 1718] A. I have had no occasion to have made a team track study before to my recollection.

Q. So this is the first team track study you have ever

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made or the first team track study with respect to Manhattan Island?

A. This is the first one with reference to the specific 37th Street.

Q. Is it the first one with reference to the Jersey City side?

A. No. We have gone into that before several times.

Q. Have you had occasion to make cost studies with respect to any other team tracks in or around the greater New York area?

A. No. I can't say that I have.

Q. Well now, going back to your pier studies, you say those have been made in the same way back to 1932?

A. That is correct.

Q. Have there been any changes in operations over the period since 1932 that would have caused any change in the method of making the studies?

A. Well, generally speaking I would say the operations are fairly similar. Possibly wtihout the change in motive power there might have been some slight effect on them.

Q. So that you had no improvement then in your terminal operations at the piers since 1932?

A. I didn't say we had no improvement.

Q. You have had no change whatsoever?

A. I said the operation was relatively the same.

[fol. 1719] Q. So you have observed no change in operations then that would cause you to change in any way your method of making the study, is that right?

A. We took into account anything that was involved, any change in operation, in the study, as we progressed each time we studied it.

What changes in operation did you take into account in your studies since 1932?

A. I couldn't sit here and specifically say what they were. We are still coming into Harsimus Cove. We are still crossing the river, and we are still delivering the perishables at Pier 27 and 28.

Q. Are you sure that there are some changes in operations?

A. There are possibly some, yes.

Q. But you are not sure?

A. I didn't say I wasn't sure.

Q. You said possibly. How do you distinguish between possible——

A. There are some.

Q. But you can't name any?

A. No.

Q. Is there anything in your location of your piers that differs so materially from the location of the Erie Piers, the New York Central Piers, that would call for greatly increased costs in your case compared with those two railroads?

A. I am not in a position to answer that. I didn't study [fol. 1720] the situation at the Erie Piers or the New York Central Piers.

Q. Have you looked at the exhibits that were presented in this case by the Erie and the New York Central?

A. That is correct. I saw them.

Q. Have you any explanation for the difference in the cost between your railroad and the other two railroads?

A. I said previously I had none.

Q. Do you think that one explanation might be the location of the piers?

A. I wouldn't know.

Q. Do you think that you would be any better off if you had Piers 20 and 21, than if you had Piers 27 and 28?

A. I wouldn't know the answer to that one either.

Q. Do you think there is any difference in your handling of the perishable freight? Do you give it such a more luxurious handling than the Erie and the New York Central as to account for the great difference in costs?

A. I am not in position to answer that one.

Q. Can you find anything in the location of your yards that might account for the difference in costs?

A. No, sir. I don't know.

Q. Can you think of anything other than the general inefficiency of the Pennsylvania Railroad that might account for the difference in the costs?

A. No, sir. I don't know.

[fol. 1721] Mr. Miller: Objection. The witness has said——

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Exam. Walsh: You must take out that objectionable word.
Mr. Loos: I withdraw the question.

By Mr. Loos:

Q. You are familiar, are you not, Mr. Heywood, with the so-called indices of operating efficiency?

A. I have seen them quoted in different bul-etins from Washington, yes.

Q. And you are aware, are you not, that the Pennsylvania Railroad has not shown in the past 10 years, or so, anywhere near the improvement in those indices of operating efficiency as have other railroads in the country generally?

A. I don't know as I have made a comparison between railroads. The indices—when I said I had seen them, I referred to them generally from Dr. Parmelee's statement that he puts out, usually on an annual basis, as to the operation during the year.

Q. And you haven't compared your railroad's showings with other railroad showings?

A. Not in respect of specific indices, no. We have compared other things as to tons loaded, carried, and so forth. We have looked at that.

Q. Is that because you haven't been interested in measuring the efficiency of the Pennsylvania Railroad with other railroads?

A. No. I wouldn't say so.

Q. In this exhibit which you have submitted, Exhibit 148, isn't it a fact that so far as Yard costs are concerned, [fol. 1722] you have shown—you have based your figures on averages computed on the basis of total yard costs, and not on the basis of time studies?

A. That is correct.

Q. And in that respect your method differed from the Erie method did it not?

A. I believe it did. Yes.

Q. Do you think that that difference in method might account for some part of the difference in your costs compared with the Erie costs?

A. Now that you have asked me I would say that had it been a time study, the costs to handle perishables in the yard would have been greater than it is on the average.

Q. You think then that the Pennsylvania takes more time to handle perishable cars in yard switching than to handle other cars, whereas the Erie shows that it takes less time?

A. I don't say whether it takes time like that, but I will say that a perishable car certainly gets more handling than an ordinary car in that yard.

Q. But if the Erie exhibit shows, and I presume you haven't studied it sufficiently to say, but if the Erie exhibit does show that the switching time on perishables is less than the switching time on other cars and you say that the Pennsylvania takes more time to switch perishables than other cars wouldn't that indicate inefficiency on the part of the Pennsylvania in the handling of perishables?

[fol. 1723] A. I don't know what would give anybody that idea. Let's bring the Erie down to Harsimus Cove and see what they do.

Q. Do you think it is the difference in the set-up of your Harsimus Cove Yard compared with their Croxton Yard that is responsible for this great difference in cost?

A. I said I didn't know, and I hope that is understood; if it isn't I can make it plainer.

Q. Have you any interest in finding out why your costs are so much greater than the Erie costs?

A. I might if I had time.

Q. But you haven't time for an incidental detail like that?

A. No, sir.

Mr. Loos: That is all.

Exam. Walsh: Any further questions?

Mr. Hoffman: I have a question or two.

Exam. Walsh: Mr. Hoffman.

Cross-examination.

By Mr. Hoffman:

Q. Mr. Heywood, the Pennsylvania Railroad rents Piers 27 and 28 from the City of New York?

A. That is correct.

Q. And have you terminal offices located at 27 and 28?

A. What do you mean by "terminal offices"—agency?

Q. What offices have you there?

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A. The agency, our perishable agent, just the same as any other agent but he is located on the pier.

[fol. 1724] Q. Do you have any other offices besides what you call perishable agency?

A. Not that I recall, only connected with perishables is all that I recall.

Q. But that perishable agency handles all matters in connection with the termination of the movement of perishables to Manhattan; isn't that true?

A. Yes.

Q. So that it might be said that the duties of that office could be divided into that which might pertain to unloading and that which might pertain to the entire terminal operation of that movement?

A. Well, I guess it might be said that could be true, yes.

Q. And wherever you have a termination of the line haul movement you have to have offices, don't you?

A. Well, I wouldn't say yes to that. There is many outlying stations where we have an agency that covers half a dozen or more agencies. Where we have no agency we call it an agency yet make a delivery of carload at that point.

Q. The office work is handled some place else?

A. That is right. At what we call the consolidated station.

Q. But all the office work is fixed in connection with this perishable movement, is fixed at piers 27 and 28?

A. From an agency standpoint, yes.

Q. Now, turning over to page 35, I notice at the bottom [fol. 1725] of the page you have Account 374, weighing inspection and demurrage bureaus, and under the columns, Piers 27 and 28, you have the amount, $8,024.82. Do you see that figure?

A. Yes.

Q. Is that expense in turn reflected on page 1 of your exhibit 148, Station costs less miscellaneous revenue?

A. Yes.

Q. Piers 27 and 28?

A. That is right.

Q. So that this charge, however, pertains to weight as one of the items?

A. Well, that is the ICC Account.

Q. What do you mean by "weight".

A. In the Account 374, it is known as weighing inspection and demurrage bureaus. At the piers this is purely inspection.

Q. Isn't that weighing for the purpose of determining whether the commodity has moved under estimated weights under the line haul?

A. Oh. If we get into weighing, Yes.

Q. It has nothing to do with unloading, has it?

A. I didn't say any of the 8,282 had anything to do with it either.

Q. It has nothing to do with the terminal charge has it?

A. It has to do with inspecting perishable traffic.

Q. For the purpose of ascertaining whether the perish-[fol. 1726] able traffic has conformed with the estimated weights under the line haul?

A. I have said nothing to that effect. If you will notice, it says railroad perishable inspection agency.

Q. But you are saying are you not that it pertains to the estimated weights under the line haul?

A. I am not saying anything.

Q. What does it mean then, weighing?

A. What does what mean? I explained that that was under the ICC Account 374, known in the classification of accounts as weighing inspection and demurrage bureaus.

Q. Tell us further what it means, what you think it means.

A. What I think what means?

Q. Weighing.

Mr. LaRoe: Mr. Examiner, could we go off the record? It is quite clear counsel and the witness are confused.

Exam. Walsh: Off the record.

(Discussion off the record)

Exam. Walsh: On the record.

Mr. LaRoe: Will the witness please define what is in his inspection figure, that eight thousand?

The Witness: That is inspection in the handling of perishables at Piers 27, 28 and 29, specifically.

Mr. LaRoe: What precisely is included in the inspection?

The Witness: Inspection of the freight by the agency.

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[fol. 1727] Mr. LaRoe: Not any weighing?
The Witness: No.

By Mr. Hoffman:

Q. But the inspection pertains to nature and quality of the commodity upon arrival for the purpose of ascertaining, is it not true, whether there are claims or for the purpose of improving the carriage of the commodities?
A. Somebody else will have to answer that.
Q. Then you don't know what this eight thousand dollars is for?
A. I told you what the eight thousand was for and I will stick to it on the record any time.
Q. Isn't this, Mr. Jensen's department, where he makes inspections for the purpose of improving the loss by reason of claims?

Mr. Miller: Objection. The witness is having difficulty with the question——
Exam. Walsh: If he doesn't know he can say so.
Mr. Miller: If you please, Mr. Examiner——
Exam. Walsh: All right.
Mr. Miller: I am objecting to the form of the question because as I understand the witness he refuses to answer not the factual material in the question, but the conclusions which the question carries with it.
Now, if the question can be made purely factual, I am sure the witness will have no difficulty, but I think it is not [fol. 1728] entirely fair in the light of the previous answers to frame the question as this one is framed.
Mr. Hoffman: Withdraw the question.

By Mr. Hoffman:

Q. What is the inspection for?
A. Inspection of the perishable traffic for claim purposes.
Q. For claim purposes?
A. Yes.
Q. They make inspections of that nature at other terminal points?
A. Of perishables?
Q. Yes.
A. Yes.

Q. So that this particular expense is an expense that is incurred at any terminal point in connection with the arrival of these perishables at destination?

A. At any point we would put it in, yes.

Q. Now, turning to page 35 I notice you have an item, Aetna Cooperage and Stevedoring Company, recooperage $8,050.40, under the column Piers 27 and 28. On page 35 of exhibit 148.

Is that item, Mr. Heywood, of $8,050.47 reflected in the item on page 1 of that exhibit entitled, Station costs less miscellaneous revenue," Piers 27, 28 $92.69?

A. That is correct. It is in there.

Q. Will you tell us what you mean by recooperage, as the same appears on page 35?

[fol. 1729] A. That is the reclaiming of damaged packages by the Aetna Company and recooperage means to be in receivable condition.

Q. Is it then turned over to the consignee after it is recoopered?

A. Yes.

Q. And the requirement for recooperage might be due to losses incurred in transit or damage to the commodity in transit?

A. It may have been damaged in transit, yes. I couldn't say it wouldn't.

Q. Isn't that the usual case?

A. Yes. It is usually done in transit. It wouldn't be damaged if the car was standing still.

Q. What in your opinion is the relationship between this $8,050.40 and the so-called terminal operation costs at Manhattan at these piers?

A. Well that is where the operation is performed and it costs money to do it there at the terminal and it is certainly a terminal charge.

Q. Don't you have recooperage charge at other terminal points where the commodity is not unloaded at piers?

A. Sure. I admitted that. I said that, yes.

I also said it would be included in the cost at that point too.

Q. But it has nothing to do, has it, with a terminal charge for terminal costs as such, operations costs?

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Mr. Miller: Objection.

[fol. 1730] The value of this exhibit is not to be determined by Mr. Heywood.

Exam. Walsh: The witness may answer.

The Witness: I certainly thought so, or it would not have been put in the exhibit.

By Mr. Hoffman:

Q. Even though this claim may have taken place because of some damage in Chicago on the way from California to Manhattan?

A. It may have; who is supposed to pay? You have got to get in the costs some way, don't we?

Q. Sure, it is in the line haul.

If you were making an exhibit in justification of the line haul rate would you or would you not include this item of recooperage as one of the items in justification of the cost of the line haul rate?

A. I would put it where we have. If we were putting line haul in here it would have gone in terminal just the same.

Q. And not in line haul?

A. That is right.

Q. Are there any other items of that nature that you have included in these so-called terminal costs?

A. I can't think of any at the moment, like recooperage.

Q. Well now, let's look at the items starting, "Western Fruit" on page 35, under the column "Piers 27, 28 $578.75.

Isn't there a separate charge made for sorting at Man-

[fol. 1731] hattan, aside from the unloading charges that are set forth in the tariff here in question?

A. If there is it is beyond my recollection.

Q. So that you have no knowledge as to whether there is a separate sorting charge made in Manhattan at these piers over and above the line haul?

A. That is correct. I do not.

Q. And that item of $578.75 is likewise reflected, is it not, on page 1 of Exhibit 148 under the notation "Station cost less miscellaneous revenue, Piers 27 and 28"?

A. Yes, and if there is any correction, it would be in the miscellaneous revenue.

Q. Well, it is less miscellaneous revenue?

A. That is what I said. That is right. That is giving you the credit of the revenue.

Q. Do you know whether it has been added into the cost or subtracted from the cost in the item on page 1 entitled "Station Cost Less Miscellaneous Revenue?" Can you answer that?

A. No.

Q. So you don't know. Isn't it likely that you have added this item into the cost rather than deducting it, referring to the item of $578.75?

A. I don't know what you mean by adding it in rather than deducting it.

Q. I mean by charging it as a cost which would be reflected [fol. 1732] on page 1 in the item "Station cost, Piers 27 and 28."

A. I have put it in here as cost at Pier 27 and 28.

Q. Now, referring again to page 35 and the item "Penn Stevedoring Company—unloading, cleaning, $82,023.48." appearing under the columns, Pier 27 and 28.

That is the amount which the Pennsylvania Railroad actually has paid out to the Penn Stevedoring Company?

A. That is correct.

Q. Have you made any study for the purpose of ascertaining what the costs of the same service would be or are as performed by the Penn Stevedoring Company?

A. You mean whether or not this figure has some overhead for the Penn Stevedoring?

Q. Whether you have made any study of the costs incurred by the Penn Stevedoring Company in discharging the service that you refer to here?

A. I am not interested in the Penn Stevedoring Company's costs. I am interested in what they charge us.

Q. Is your position the position of the Pennsylvania Railroad Company, that you are not interested in what it costs the Penn Stevedoring Company to perform this service?

A. I didn't say that.

Q. Do you know what Item or what element of profit the Penn Stevedoring Company is making in connection with the charges made here?

[fol. 1733] A. No.

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I do not, but we audit their accounts periodically, possibly every six months, and every time they go for an increase it is only done after we have made a pretty thorough audit of their accounts.

Q. But you have made no study in connection with this case here based upon that audit or their costs, even though their figures are available to you?

A. Their figures are available, yes.

Q. But you have not gone behind what they are charging the Pennsylvania Railroad Company?

A. What am I supposed to do, give you that as a credit?

Q. You are not supposed to do anything for me. I am just asking questions.

A. This is what it costs the Pennsylvania Railroad, $82,-023.48 for the handling of perishable at the pier, and that is why it is in there.

Q. Which includes an element of profit to the Penn Stevedoring Company?

A. It possibly does. I don't think they care to run on just getting pay for their men and walk on.

Q. Might that be a profit of 20 or 15 per cent on the total costs of the Penn Stevedoring Company?

A. I don't think it is anything like that, no.

Exam. Walsh: You don't know?

[fol. 1734] The Witness: I don't know.

Exam. Walsh: The witness doesn't know.

By Mr. Hoffman:

Q. And the comments you have made with respect to the Item $82,023.48 that I have just referred to: would they or would they not be the same with respect to the other item on the same page, paid Aetna Cooperage and Stevedoring Company, $156,686.21?

The Witness: Read the question, please.

Mr. Hoffman: Withdraw the question.

By Mr. Hoffman:

Q. The item, $156,686.21, opposite the caption, "Paid Aetna Cooperage and Stevedoring Company" likewise is

the amount which the Pennsylvania Railroad paid the Aetna Cooperage and Stevedoring Company?

A. That is right.

Q. And you have made no study with respect to what the costs are for performing that service by Aetna Cooperage and Stevedoring Company?

A. No.

Q. You don't know whether there is an element of profit in that?

A. Yes. There is an element of profit.

Q. Do you know what the amount of that profit is?

A. No. I do not.

Mr. Hoffman: No further questions.

Mr. LaRoe: Could we have the record show at this point [fol. 1735] which of the companies shown on page 35 of this exhibit 148 are subsidiaries of the Pennsylvania Railroad?

Exam. Walsh: Can you answer that?

Mr. LaRoe: Don't look at your lawyer. Answer the question.

The Witness: I can answer it but you don't have to speak that way about it.

Mr. LaRoe: Go ahead and answer the question, please.

Mr. Miller: I don't know. If you know, tell him, Mr. Heywood.

The Witness: None of them.

Mr. Hoffman: What do you mean by subsidiary?

The Witness: Are we going to get into that kind of an argument?

Exam. Walsh: Wait a minute now.

Mr. LaRoe is conducting the cross examination. He is the man that used the word "subsidiary."

By Mr. LaRoe:

Q. Does the Pennsylvania Railroad have any financial interests in any of the companies on page 35?

A. Well, RF & P, yes. We own some of the stock.

Q. Does it have any financial interest in the Penn Stevedoring Company?

A. No, sir.

Q. None whatever.

A. Not that I have any knowledge of.

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Q. How about the Aetna Cooperage?
[fol. 1736] A. The same.

Exam. Walsh: It has no interest in it?
The Witness: No, sir.
Mr. Loos: Mr. Examiner, may we now have repeated on the record the statement made by Mr. Miller to the effect that there are many items in this exhibit that pertain to the line haul rate?
Mr. Miller: In the sence that there are many items in these exhibits which are not properly apportioned directly to the unloading, that was in the sence in which I intended the language to be understood; that is, what I had in mind was this: In our previous cost studies in this proceeding we have presented cost studies as to the cost of unloading this freight at New York and Philadelphia. This study is not confined to cost of unloading so that some of the services covered by these cost studies are or would be on a proper cost analysis, assigned to, or would be understood as covered by the line haul rate; and as not to be included within the services performed for which the unloading charge is compensation.
Mr. LaRoe: That is substantially the same.
Mr. Loos: I think that is clear.
Mr. Miller: If there was any thought that this study was intended to indicate cost of unloading, that is, that this $120 figure is cost of unloading to the Pennsylvania, or that we are relying upon that figure as a cost of unloading, certainly not.
[fol. 1737] Mr. LaRoe: That is very clear now.
Mr. Loos: And not in substantiation of the charge under litigation in this proceeding?
Mr. Miller: You mean that we are—you mean—no; we do not rely on $120 worth of cost to justify this unloading charge; no.
Mr. Fitzgerald: Mr. Examiner, may I ask from Mr. Miller's statement if it is not incorrect that exhibits No. 148 and 149 should be captioned "Unloading charges on fruits and vegetables" and that the record should be corrected to show a proper designation for those exhibits?
Mr. Miller: That is just the caption of the case, Mr. Fitzgerald. They certainly aren't intended to describe the cost

of $122.73 as being the cost of unloading on the Pennsylvania Railroad.

Mr. Fitzgerald: I would only say in answer to that, Mr. Examiner, that the New Greenwich Classification, pay yards and produce terminal, are not a part of the caption of the case, and yet they are part of the caption of the exhibit to which I referred.

Mr. Miller: I think the caption of those two exhibits is perfectly proper. I see no reason for changing it. Now, the exhibits have been thoroughly explained. We have told you that we are not relying on this. I am not going to change the exhibit, no.

[fol. 1738] Exam. Walsh: All right.

Any further questions of this witness?

Mr. Thornton: I have a question.

Cross examination.

By Mr. Thornton:

Q. Mr. Heywood, on Exhibit 148, on page 4 in your first column designated "Pier 27-28" four lines from the bottom you show an item of $3.43, and on the left is a designation "taxes, real estate, road and equipment".

Will you explain what you mean by the phrase "road and equipment"? That is page 4.

A. Well, in Harsimus Cove, which this is under, Harsimus Cove, we pay taxes on the property on two bases. You have to first have your main line and then the two adjacent thereto.

They are on two different bases and in the State of New Jersey we also pay a tax on the equipment in the State.

Mr. LaRoe: That is on all your equipment in the State whether it is used for this traffic or not; is that not true?

The Witness: That is correct. It is on the total equipment in the State, sir.

Mr. LaRoe: How does it get into Pier 27 and 28 then?

The Witness: That is not directly in Pier 27 and 28. It is Harsimus Cove, if you will note the top heading but it shows the distribution between the three points of delivery.

Mr. LaRoe: Does not the total 1285 on that page at the bottom have anything to do with Piers 27 and 28?

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[fol. 1739] The Witness: That is the cost of Harsimus Cove on those expense items there, of the cars that were delivered to Pier 27, 28 and 29.

Mr. LaRoe: That is clear. Thank you.

The Witness: I had to do it so you would see 27th and Henderson Streets separately on this thing of Harsimus Cove.

Exam. Walsh: Any further questions?

(No response)

Exam. Walsh: Any further questions of the witness?

Mr. Fitzgerald: Mr. Examiner, does that conclude the examination on exhibit 148? Should we now consider that it is proper to cross examine on Exhibit 149?

Exam. Walsh: Yes. Unless you want to adjourn at this time. It is 12 minutes to 1.

This traffic that you handled to Harsimus Cove over to Piers 27 and 28, you car floated over there, and you get that traffic, if it is coming from the South, you get it at Potomac Yards, usually?

The Witness: Yes, sir.

Exam. Walsh: Do you get any in through Hagerstown, N. & W.?

The Witness: There is a little comes through.

Exam. Walsh: How about the old NYP & N?

The Witness: No, only what comes off the peninsula itself.

Exam. Walsh: Then it is floated over to Piers 27 and 28?

[fol. 1740] The Witness: Yes.

Exam. Walsh: And they have been doing that for a long while?

The Witness: Oh yes. They have been doing that, well, ever since I got into this end of it.

Exam. Walsh: And you entered the game you said around '30 or '32?

The Witness: '30, '31; right in there.

Exam. Walsh: That would be over 20 years.

The Witness: Yes.

Exam. Walsh: And the Pennsylvania had been operating in that manner many years before that?

The Witness: Yes.

Exam. Walsh: I think the record shows that.

Mr. Loos: Would the Examiner ask him also where he gets the Western fruits?

Exam. Walsh: Where do you get them, from around Chicago?

The Witness: From the Western points, through both St. Louis and Chicago gateways.

Exam. Walsh: And the Pennsylvania then handles that into Harsimus Cove for carlot purposes?

The Witness: Yes, and delivers it into New York.

Exam. Walsh: And you have been doing that for many years?

The Witness: Yes.

Exam. Walsh: And I don't suppose you are a rate man?

The Witness: No, sir. I am not a rate man.

[fol. 1741] Exam. Walsh: I shall not bother you with that.

[fol. 1742] J. L. Heywood resumed the stand, testified further as follows:

Exam. Walsh: The hearing will be resumed, gentlemen.

Cross examination.

By Mr. Fitzgerald:

Q. Mr. Heywood, I only have a few questions. Are you familiar with Mr. Talbott's exhibits which to some extent at least, parallel those which you have submitted in this proceeding?

A. I have looked at them but I am not familiar with any detail of them, no, sir.

Q. Would you be surprised then if I told you that the comparable figures which he reached for costs of terminating cars at Philadelphia are in each case about 35 percent lower than yours?

A. No, nothing surprises me in figures.

Q. Have you any explanation of that very substantial difference?

A. No. I don't have any answer to it.

Q. Now, Mr. Heywood, it has appeared in the cross examination as respects your exhibit No. 148 that there are

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a large number of items included in your data which were not attributable to unloading, but which, to the contrary, might properly be considered a part of the linehaul charge; is that not correct?

A. No, sir. I admit nothing to that effect and I have [fol. 1743] stated nothing to that effect.

Q. Your counsel has stated of record it is a fact, hasn't he?

A. I would have to hear his statement before I agree with what he said. That statement was a little complicated to me.

Q. Would you like to hear it over again?

A. No, not now, unless you want to take the time. I will go on record and say one thing about these studies.

These are not supposed to show unloading alone. These are the cost of the delivering of perishable freight at pier 27, '8 and '9, a pier station, as compared with delivery of it at a team-track. That is what this is portraying.

Q. Then the caption "unloading charges" was perhaps an inadvertence to exhibits 148 and 149?

A. No. It is sort of in line entirely with what the Commission asked for, under the heading of their order.

Q. In all events, Mr. Heywood, is it a fair statement to make that the analysis in exhibits 148 and 149 include substantially the same types of accounts and are built up in substantially the same manner and therefore include the same general items of expense?

A. That is a correct statement. Both were prepared on the same basis.

Q. Now, Mr. Heywood, as respects page 19 of your exhibit No. 149, I just want to ask you a couple of questions about one item there. Do you recall my request to Mr. [fol. 1744] Miller, which may or may not have been referred to you direct, but as the result of which you and I had a telephone conversation a few days ago?

A. That is right.

Q. And I requested of you that you give me the basic data supporting the item of $7,091.03, captioned, "Wages earned at and Chargeable to Pennsylvania Produce Terminal, and appearing on Payrolls at South Philadelphia Freight Station." Did you not?

A. Yes, sir.

Q. Now, is it correct to state that your answer was substantially that the basic data were not available?

A. I said it was not readily available for me, from any of the records that we had at hand to give you the figure directly, because you wanted to know where the other time of the men were and I said we would have to say how many of these men were involved in the money represented, that I told you as truckers, and so forth, as against the chargeable to South Philadelphia.

Q. Well, Mr. Heywood, would you briefly, please, state for the record what you told me were the basic figures from which you arrived at this total of $7,091.03 for wages at the Pennsylvania Produce Terminal?

A. Yes. I told you that the manner interchangeable between our South Philadelphia freight station and our perishable station and the payroll is directly assignable as South Philadelphia and the charges are made based on the time given to the South Philadelphia Freight station by [fol. 1745] the foreman from the Produce Terminal, and that is the basis of the payroll and this is the basis of the foremen's time slips, that assign so much of the charge to the perishable out of the total money paid the trucker, stevedore and so forth.

Q. And the time you have—. How many loaders is included in that total figure?

A. I don't think I have that paper right here. It is with my rough papers.

Q. If I remind you, eight and seven-eighths loaders at $1.426 per hour?

A. That is correct.

Q. And 11⅜ truckers, at $1.402 per hour?

A. That is correct.

Q. And nine and three-eighths sorters——

A. At $1.426.

Q.—making a total of $7,042.91?

A. That is right.

Q. But these fractional figures represent then, as I understand it, an estimate based upon statements given you by the foremen as to the proportion of time spent by men between the Pennsylvania Produce Terminal and the South Philadelphia Freight Station, is that correct?

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A. Well, I wouldn't exactly say it that way. It is the foremen at the Produce Terminal's check of time of the man while working on produce; that plus the time made at South [fol. 1746] Philadelphia Freight Station makes the total of the time of the man for his payroll, amount allowed him on the payroll. There is no estimate. It is actual time he spent at these two stations interchangeably.

Q. How do you arrive at eight and seven-eighths men, then?

A. That is on the basis of the total men working, and how many hours.

Q. Do you have any figures from which you could determine for us the number of men?

A. I said I could give it to you on Friday. It would take time.

Q. I did request that you have that information available for me today, didn't I?

A. I told you I wouldn't get it today too, didn't I?

Q. Do you have the information available?

A. No, I do not. I told you we would have to go back and work it out and get the men involved and we can't be over here and in Philadelphia.

Q. Now, I believe you stated, Mr. Heywood, that these men load outbound l.c.l. freight at the South Philadelphia Freight station.

A. Yes. I think I did say that. I correct that. It is inbound freight at South Philadelphia. It is outbound at Federal Street.

Q. I thought this was Federal Street station.

A. No. This is inbound. It is the pier—excuse me. It is [fol. 1747] not the pier. It is the platforms between the team tracks and the produce terminal, the one between them, and that is the station that we receive our l.c.l in Philadelphia.

Q. Many of these men are floaters, I believe you said, and are paid on a daily basis?

A. That is right. Many of them are there waiting to know whether we need them that day.

Q. But you have no pay data at the hearing on the amounts paid by you to those men on any daily basis? Is that correct?

A. No. I have not, only this accumulation here.

Q. And of all the items of cost included in exhibit 149, consisting of 21 pages, that item of $7,000 is the only expense directly attributable to the unloading of perishable produce; is that not correct?

A. No, I wouldn't say that.

Q. What other items in that exhibit are directly attributable to produce?

A. There are other items that pertain to the agency, as foremen, and so forth, that are a hundred percent in there.

Q. The agent doesn't unload perishables, does he?

A. I didn't say agent, I said the foreman under the agency, who is a hundred percent time at that station.

Q. What other items of expense included in that exhibit directly apply to unloading?

A. I don't see where that has anything to do with this exhibit.

[fol. 1748] Mr. Fitzgerald: That is all.

Mr. Miller: Mr. Fitzgerald, are you satisfied you have all the information you want about this exhibit? Is there some additional information you want?

Mr. Fitzgerald: I would like to have the basic data on those employees.

Mr. Miller: What is it exactly you want?

Mr. Fitzgerald: I think my letter to you spelled it out, Mr. Miller.

Mr. Miller: I thought we fully complied with your letter. As I understood our conversation it was that you wanted to know the number of men and the rates of pay that went into this figure of $7,000 and I thought that had been supplied. Now, if there is some additional information you want we will be very happy to supply it.

Mr. Fitzgerald: The information that has been developed for the record, it seems to me, gives only one additional item, to what was in your exhibit, and that is the hourly rate. It doesn't give the number of men involved or the number of hours they worked or the number of days they worked or how many men were on a crew in any particular day.

Mr. Miller: Didn't Mr. Heywood give you the number of employees? Aren't these fractional figures for employees? Isn't that the number of employees?

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Mr. Fitzgerald: I think not.

[fol. 1749] Mr. Pettijohn: Fractional days, you mean, Mr. Miller?

Mr. Fitzgerald: It is only a man hour figure. It has no relationship to crews, as I see it.

Mr. Miller: What is the information you want?

Mr. Fitzgerald: I would like to know the number of men, the number of job classifications——

Mr. Miller: You have the number of job classifications. I am sure of that.

Mr. Fitzgerald: You have through.

Mr. Miller: Yes.

Mr. Fitzgerald: The number of men who worked during the month of December and the number of hours they worked. I am assuming that this hourly rate is an actual hourly rate and not some average that would have no relationship to what any individual man actually received.

Mr. Miller: That is the actual rate, isn't it, Mr. Heywood?

The Witness: Absolutely; the rate paid.

Mr. Miller: We will endeavor to supply the number of men and the number of hours going into this $7,000 figure. Is there anything else?

Mr. Fitzgerald: No.

Exam. Walsh: How soon can you do that?

Mr. Miller: I don't know. Do you know, Mr. Heywood?

The Witness: It will take us a few days in Philadelphia to go down to the payroll again.

[fol. 1750] Exam. Walsh: Do you want twenty days?

The Witness: Not that much.

Exam. Walsh: Ten days?

The Witness: Ten days is plenty.

Exam. Walsh: Furnish a copy of that to the Commission in ten days, and the parties of record?

Mr. Miller: Yes.

Exam. Walsh: All right.

Mr. Fitzgerald: May I ask one further question?

By Mr. Fitzgerald:

Q. Mr. Heywood, it is correct, is it not, that in response to my request that I be permitted to see the daily time sheets of these various employees as kept by the foremen

at the South Philadelphia Freight station you told me those were confidential records and could not be displayed to me?

A. That is correct. That is my statement.

Mr. Fitzgerald: That is all.

Exam. Walsh: That concludes your cross examination?

Mr. Fitzgerald: Yes, Mr. Examiner.

Exam. Walsh: Any further questions?

Mr. Miller: I have one question.

Exam. Walsh: On redirect.

Redirect examination.

By Mr. Miller:

Q. Mr. Heywood, it is my recollection that in the previous testimony in this case there was no testimony to the effect [fol. 1751] that the crews working at the perishable terminal and the crews working at South Philadelphia Freight station, were pooled. Do you know when that change in operating practice began?

A. No. I can't say at this moment, no.

Q. Do you know whether there is now a limitation on the percentage of extra men who can be carried on that joint payroll?

A. No, I don't know whether there is a limit on that.

Q. But the fact is, is it not, that at the present time the men are not maintained as separate employees at the perishable terminal and separate employees at South Philadelphia station?

A. No, sir.

Q. But rather, they are carried as a joint labor force which works at both stations; is that correct?

A. That is correct.

Mr. Miller: That is all.

Exam. Walsh: Any cross examination?

Any recross?

Mr. Wells: I understood, Mr. Examiner, he would provide opportunity tomorrow morning for looking at his working papers and I would then complete my cross examination.

Exam. Walsh: I understand he is going back to Philadelphia on an early train.

Mr. Loos: Can we go off the record, on these working papers?

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Exam. Walsh: Off the record.

[fol. 1752] (Discussion held off the record.)

Exam. Walsh: On the record.

Mr. LaRoe: Let the record show it is agreed by the Pennsylvania Railroad that they will make the working papers of Mr. Heywood available on Wednesday between now and Thursday, in Philadelphia; that counsel may go through and go over the papers with him or with people to be designated by him, and that following such examination a stipulation may be entered into, and if such stipulation can not be reached depositions may be taken, and made parts of the record.

Mr. Loos: That is agreeable to me.

Exam. Walsh: That is agreable to all the parties?

Mr. Miller: I wouldn't want that to be limited to Wednesday. Those papers will be there ready for examination at any time that is convenient.

The Witness: Any time. That is what I say, but I can't be there Thursday.

Exam. Walsh: Anything further with this witness?

Mr. Wells: May I ask just a very few questions?

Exam. Walsh: Proceed.

Recross examination.

By Mr. Wells:

Q. Mr. Heywood, for account 202, at Harsimus Cove, you showed an amount of $82.28, and the amount for that account at New Greenwich was $67 and a quarter, per equated ton mile, or track mile was it?

[fol. 1753] A. Track mile.

Q. Now, the cost from therefore at Harsimus Cove, for Account 202 was 22.35 per cent greater than at New Greenwich, why?

A. Well, there is a difference in the land over there. There is more maintenance necessary in that yard than there is—it is very close to the river, and downgrade, really on a natural hump you may say down to the river's edge, and also our maintenance may be governed somewhat under the budget as to the quantity of cars handled in one yard as compared with another.

Q. In other words, the number of cars handled at Atlantic then would cause the unit cost to vary considerably?

A. It certainly has some effect on it.

Q. Well, similar your account 214 for Harsimus Cove is 63.43 percent greater than the account 214 at New Greenwich; 218, 19.92 percent and 220, only 1.17 percent greater, whereas, the reverse is true as to accounts 212 and 216; those respectively at New Greenwich being 31.18 percent and 63.54 percent greater than at Harsimus Cover. Can you explain those?

A. Not off hand, no. That would be technically up to our operating department to determine what they had included in their program of maintenance in one territory as compared with another and it may happen in one year at one place and wouldn't happen in that same year at the other. That is why we try to go three or four or five years on maintenance. One year we admit is not quite sufficient.

[fol. 1754] Q. These are three year averages?

A. I understand that but within that three-year gap you may have wound up in one territory; at the end of this year, you hadn't put anything in that for two years into that other territory and you might go much heavier than you would in the other.

Q. Is the substance of what you are saying then that the longer period of time you use for your computation, the more representative is the nature of the unit cost resulting?

A. In respect to maintenance accounts, yes; I would say that is correct.

Q. You will agree that those differences that I have pointed out are very considerable, are they not?

A. They are, one of those is in our eastern division, and prior to May, the other one was in the northern zone, as we call it, and taking the three-year period it got into that part where we finally consolidated the New York Zone with the Eastern Region.

Now, we have but one zone in that territory.

Q. So that the one zone would be the same amounts that we were using in connection with Harsimus Cove——

A. The Harsimus Cove is another zone, it was at that time, in some of the past year, than the Greenwich yard in Philadelphia.

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Q. So some of those differences, that is, a difference in the accounting region that was used, might be the occasion [fol. 1755] for the great differences in the costs that were used by you?

A. It may be; according to their trams, as to what maintenance they were doing in certain sections.

Q. By the way, I notice that you said just now piers 27, 28, and 29.

A. Yes. I am so used to saying that, that it is just a normal thing to say. On this we did stick with 27 and 28.

Q. Well, the fact is that years ago the perishable piers of the Pennsylvania at New York City were those three, were they not?

A. That is correct; it is still at this time when there is overflow. It is possible it is used.

Q. But under usual conditions today you use only piers 27 and 28?

A. We only worked from December, 1950, on the two piers, 27 and 28.

Q. Is that because of a reduced volume of perishables being handled by the Pennsylvania Railroad?

A. Possibly more efficient handling.

Q. Possibly?

A. Yes.

Q. You can't point to any figures in your exhibit that will indicate more efficient handling, can you, Mr. Heywood?

A. Not when costs continually go up for material and wages alone, you wouldn't. They offset anything you do in a change in your operation for efficient operation. We [fol. 1756] would need entirely different rates if it wasn't for the fact that the offset of some of that wage and material has been offset by a change and a better operation.

Q. The question I asked was whether you can point to any figures in your exhibit—

A. I think it is reflected all the way through the figures.

Q. So that you can not point to any particular figure that indicates any improvement in efficiency of the Pennsylvania Railroad?

A. I don't say it doesn't show improvement in efficiency, no, sir. I do not. I said it is reflected all the way through the operation.

Q. But you can't point out a single instance anywhere in either of your exhibits, can you, Mr. Heywood?

A. I think the record will have to stand as I have stated it.

Exam. Walsh: That has been answered.

Mr. Wells: I assume Mr. Miller that some of the explanations, such as differences between the 20,000 and 21,000, either, will be included in the papers and we can cover those items and similar ones by stipulation?

Mr. Miller: I can't say that I know exactly what figures you are talking about but I can certainly tell you that you will have free access to all the working papers which went into the compilation of these two exhibits.

Exam. Walsh: Does that conclude your cross examination?

[fol. 1757] Mr. Wells: Yes.

Recross-examination.

By Mr. Pettijohn:

Q. Mr. Heywood, did you include all of the yard tracks within the yard limits in arriving at your cost at Harsimus yard and at Greenwich yard?

A. All the costs within the yard limit as we determined it, yes.

Q. Aren't some of those tracks linehaul tracks for the receiving and forwarding of cars and not properly chargeable to yard operations?

A. Not as far as I am concerned, no; the perishable traffic went over the same tracks as the other cars so they are all involved.

Q. What multiplier did you give your receiving and forwarding tracks as compared to your straight switching tracks?

A. On yard tracks, about 3.33, as compared with one for a road track.

Q. How did you classify your receiving and forwarding tracks?

A. I would have to go back to the chart to show you exactly where that lays, where the road starts and where

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the road linehaul to the interline track or whatever you wish to call it, meets.

Q. On Harsimus yard, on page nine of the exhibit, you show by expanding the hours, 34,175 miles for yard locomotives, do you not?

A. 34,000—I don't see that.

Q. Well, you have got five thousand, six hundred and ninety-five and nine tenths engine hours, have you not?

[fol. 1758] A. You are speaking of total on the page?

Q. That is right.

A. Okay. I haven't got it added. I will take your word for it.

Q. And you show that you have 46 locomotives on which taxes are assessed, do you not?

A. Where is that shown? Is that on that page?

Q. Page 14, I believe.

Exam. Walsh: You gave us page 9.

Mr. LaRoe: We are having a hard time following you because you gave us the wrong pages.

By Mr. Pettijohn:

Q. Page 14 you show 20 steam and 26 diesels.

A. That is right.

Q. Now, at 46 locomotives that is 743 miles per locomotive per month, is it not?

A. I guess so.

Q. And that it would average 29.7 miles on a 25-day month, would it not?

A. That is your figure. I will accept it.

Q. And at six miles per hour, that would be equivalent to about five hours work per locomotive per day, wouldn't it?

A. According to your figuring.

Q. Isn't it your figures? They are taken from there?

A. I haven't checked it.

Q. Do you consider the use of a switch engine at five hours a day efficient operation of a railroad?

[fol. 1759] A. I didn't say so.

Q. I thought you told Mr. Wells a little while ago that all of your statistics showed efficient operation and improved efficient operation.

A. That is what I did on that, yes.

Q. You still claim that that is efficient operation with respect to mileage?

A. If what you say are the facts, five miles, it must be good work, yes.

Q. In other words, you think a switch engine ought to work five hours out of 24 and that reflects efficient operation of a yard switch engine?

A. In Harsimus Cove it may have worked five hours but it may have worked beyond that. We stopped it at the yard limits. This doesn't say that locomotive worked five hours a day. That locomotive was used beyond the Harsimus Cove yard.

Q. For that many hours how many switch engines had you ought to have in the yard?

A. The ones that are shown on page nine, are the actual ones that worked there in the yard, which we could tie into.

Q. Page nine just shows the classes of locomotives, does it not?

A. Yes.

Q. It doesn't show the number?

A. It shows the engine hours made by it.

Q. It doesn't show the number of locomotives?

[fol. 1760] A. No, it does not.

Q. Were all of those 46 locomotives upon which you had taxes assessed in operation for the entire month of December?

A. Yes, sir. They were in operation in December.

Q. In the yard?

A. Off and on, not maybe every day.

Q. Exclusively in yard service?

A. Yes, sir.

Q. None in yard shops?

Exam. Walsh: The witness answered that question. He said they were exclusively in yard service. There is no use in arguing with the witness.

Mr. Pettijohn: I want to see the time reports of the switchmen, switch foremen, in charge of the engines at Harsimus Cove Yard during the month of December, each day.

I would like to have those records made available to me.

Mr. Miller: Are we finished with the witness?

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Exam. Walsh: Have we finished with this witness?

Mr. Pettijohn: Yes, sir.

Mr. Miller: I would like to offer exhibits 148 and 149 in evidence.

Exam. Walsh: Exhibits 148 and 149, Witness Heywood, are received in evidence, subject to the same objections as offered earlier by Mr. LaRoe and others.

[fol. 1761] (Respondent's Exhibits Nos. 148 and 149, Witness Heywood, were received in evidence.)

Exam. Walsh: The witness is excused. (Witness excused.)

The record will show at this time that any exhibit identified and discussed in evidence, will be received, unless specifically excluded.

Mr. Miller: There is an outstanding request for additional information. What is it you want, now?

Mr. Pettijohn: I want the yard, each yard foreman's time report, showing the locomotives, switch locomotive that he used, or that he had charge of each day in December 1950, in Harsimus Cove yard.

Mr. Miller: Mr. Examiner, we will refuse to furnish that information on the ground it is much too voluminous for any possible advantage to Mr. Pettijohn or any other protestant. We are perfectly willing to make available the records which we have on which these figures were based and to supply any working papers which Mr. Heywood has showing how these figures were computed. Mr. Pettijohn's request is that we go to the reports made by train conductors, and that we make available to him that enormous mass of material, and I would assume that he would want us to take off from that vast number of conductors' reports, the particular information he wants. We have done that. Mr. Heywood's working papers will show how it was done. Now, we are certainly willing to make that information [fol. 1762] available, but we do not propose to bring out a huge mass of records and supply them to Mr. Pettijohn when we have available for him the working papers on which this study was based.

Mr. Pettijohn: Mr. Examiner, in no other way can we determine how many engines actually worked in that yard during the month of December, and what engines worked in it.

Mr. Miller: I don't believe that is correct. I think that you will find all the information you want in Mr. Heywood's working papers, and you certainly do not, yourself, want to go through all those conductors' reports and certainly we don't propose to go through them again for you. We have done it once. That is enough.

Mr. Pettijohn: I don't want to argue with you, Mr. Miller, but I do want to go through those reports.

Exam. Walsh: All right. Respondents refuse to furnish the information. I shall not direct them to do so.

Next witness.

William R. Main was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your full name and what capacity you are employed by the New York Central?

A. William R. Main, Trainmaster, River Division of the New York Central, Headquarters at Weehawken, New Jersey.

Mr. Brown: Mr. Examiner, this man's testimony has been [fol. 1763] distributed and I now offer him for cross examination.

By Mr. Brown:

Q. How long have you been employed by the New York Central Railroad Company?

A. Sixteen years.

Q. How long have you been trainmaster at Weehawken?

A. Five years.

Q. Describe briefly your duties as trainmaster at Weehawken?

A. I have direct supervision of switching and train operations in the Weehawken Terminal District.

Q. Do cars of fruits and vegetables consigned to Barclay Street move through your district?

A. Yes.

Q. Will you describe the movement of these cars of fruits

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and vegetables through your district for delivery at Barclay Street?

A. When the trains containing these cars arrive at the Weehawken Terminal District they are usually yarded in the East Bound Receiving Yard which is located in Weehawken proper. The way-bills on these cars are processed by the East Bound Yard Clerk and subsequently delivered by messenger to the floatbridge clerk. The numbers of the cars consigned to Barclay Street are drawn off these way-bills and a list of said cars is delivered to the Yardmaster.

The Yardmaster turns this list over to a yard conductor so that the cars that are to be floated to Barclay Street can [fol. 1764] be switched out. The yard engine then switches these cars out of the East Bound Receiving Yard, gathers them together and advances them to the float yard. The Yardmaster then advised the floatbridge clerk that a float for Barclay Street must be ordered from the Marine Department and placed in one of the bridges. After the float is placed, the floatbridge engine loads the Barclay Street cars and the floatbridge clerk advises the Marine Department that the float is ready for towing to Barclay Street.

Q. After the cars are loaded on the car float do you have anything further to do with the movement of the cars to Barclay Street?

A. No, they are then handled by the Marine Department.

Q. I note you state these inbound cars of fruits and vegetables for Barclay Street are usually yarded in the East Bound Receiving Yard. Where else are east bound cars for Barclay Street yarded?

A. North Bergen yard which is about a mile west of Weehawken.

Q. Under what circumstances is this North Bergen yard used in the handling of cars to Barclay Street?

A. Certain operating conditions, such as congestion or by close arrival of two or more eastbound trains, necessitates that an eastbound train be yarded in North Bergen.

Q. Is there any additional handling of Barclay Street cars from the North Bergen yard as compared with those from the East Bound Receiving Yard at Weehawken?

A. Yes. At North Bergen we make a preliminary separa- [fol. 1765] tion of the cars. It is then necessary to send an engine to move these cars into the East Bound Receiving

Yard at Weehawken. After placement in the Weehawken East Bound Receiving Yard these cars are handled in the same manner as if the cars had been yarded by the road train in the Weehawken East Bound Receiving Yard.

Mr. LaRoe: I have no questions.
Exam. Walsh: That concludes your testimony on direct. Any questions of this witness?
Mr. Loos: Did you identify your exhibits?
Mr. Brown: He has no exhibits.
Mr. Loos: I have one question, Mr. Examiner.

Cross examination.

By Mr. Loos:

Q. Mr. Main, in addition to your piers, at pier 17 and 33rd Street teamtrack, does the New York Central serve other points in the Manhattan area?
A. My jurisdiction is in New Jersey only. I have no jurisdiction in New York City.
Q. In what points in New Jersey within what is commonly referred to as New York Harbor area does the New York Central deliver freight?
A. Hoboken and Jersey City and Edgewater.
Q. Are those all team tracks?
A. They are.
Q. And are there also freight stations at those points?
A. Except at Edgewater.
Q. But at the other two there are freight stations?
[fol. 1766] A. There are freight stations at the other two.

Mr. Loos: That is all.
Mr. Brown: Mr. Examiner, do I understand this man's testimony will be taken into the record?
Exam. Walsh: Yes.
Mr. Brown: That is all.
Exam. Walsh: That is agreeable to the parties.

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Cross-examination.

By Mr. Wells:

Q. Mr. Main, do you know of any movement of citrus fruit or vegetables from Florida, delivered on the New York Central in Manhattan?

A. Not in my jurisdiction in Weehawken.

Q. Well, if there were any moving to Manhattan from Florida by the normal routes of movement it would have to move through Weehawken, wouldn't it?

A. That is correct.

Q. And you do not know of any citrus fruit or fresh vegetables from Florida moving that way?

A. Not for New York City delivery.

Mr. Wells: Thank you, sir.

Exam. Walsh: Any further questions of the witness?

(No response.)

Exam. Walsh: Witness excused.

(Witness excused.)

Mr. Brown: Mr. Dugan.

[fol. 1767] Exam. Walsh: Mr. Dugan has not testified previously?

Mr. Brown: No, he has not, Mr. Examiner.

Frank H. Dugan was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your name and by whom you are employed?

A. Frank H. Dugan, employed by the New York Central Railroad as assistant superintendent, New York Terminal District.

Mr. Brown: Mr. Examiner, this man's testimony has also been distributed and I now offer him for cross-examination.

By Mr. Brown:

Q. What is your full name?

A. Frank H. Dugan.

Q. You are employed by the New York Central in what capacity?

A. Assistant Superintendent.

Q. Where?

A. New York Terminal District.

Q. What does that cover?

A. It covers all New York Central freight lines south of Spuyten Duyvil to St. Johns Park, including all the trackage on the West Side of Manhattan Island as well as Pier stations. It does not include the main line track into Grand Central Terminal.

Q. How long have you been employed by the New York Central Railroad Company?

[fol. 1768] A. Thirteen years.

Q. Will you describe briefly your duties as Assistant Superintendent?

A. Supervisory capacity covering all train operations, switching operations and freight station operations in the given territory.

Q. Are you familiar with the operations in connection with the handling of fruits and vegetables consigned to team tracks on Manhattan Island and to Barclay Street?

A. Yes, sir.

Q. Do you have jurisdiction over the operation of trains containing cars of fruits and vegetables consigned to team tracks on Manhattan Island and to Barclay Street?

A. Yes, from Spuyten Duyvil south, except that cars of fruits and vegetables for Barclay Street are handled by the Marine Department from the 65th Street floatbridge to that station.

Q. Is there any other route via which cars of fruits and vegetables move to Barclay Street other than this 65th Street floatbridge?

A. Yes, via Weehawken and floated over to Barclay Street.

Q. Let us first consider the movement of cars of fruits and vegetables moving to team tracks on Manhattan Island.

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Will you describe the method of operation for handling these cars?

A. Various trains consisting of, among other types of freight cars of fruits and vegetables enter Manhattan Island [fol. 1769] for team track delivery at Spuyten Duyvil. Some cars are cut out at 79th Street and are moved to 42nd Street in which is known as a transfer move. Other trains containing these cars move directly into 42nd Street.

At 42nd street these cars of fruits and vegetables are pulled out of the trains and handled by a switch engine to the team tracks. Although under the tariffs specific instructions can be given to place a car on a particular team track other than 33rd Street Yard, that is rarely done. Where no specific instructions are given these cars of fruits and vegetables for team track delivery are handled at the 33rd Street yard. The result is that only in rare cases are cars of fruits and vegetables handled on team tracks at any point other than the 33rd Street Yard on Manhattan Island. In the 33rd Street Yard, these cars of fruits and vegetables are usually handled on the team tracks located between West 30th and West 32nd Streets and between Tenth and Eleventh Avenues. If these tracks are filled, cars of fruits and vegetables consigned to Manhattan Island for team track delivery will be handled on other team tracks in the 33rd Street Yard area.

Q. Mr. Dugan, I show you a map and ask you what it represents?

A. This map shows the tracks of the New York Central Railroad between 42nd Street and 33rd Street.

Q. Does that map indicate the tracks that are used in the switching operation of these cars of fruits and vegetables [fol. 1770] from 42nd Street to that portion of the 33rd Street yard you have testified to previously?

A. Yes.

Q. Will you mark that portion of the tracks and 33rd Street yard which are used in the switching operation from 42nd Street to 33rd Street Yard and that portion of the 33rd Street yard which you testified is used primarily for the handling of fruits and vegetables tendered for team track delivery?

Q. I now direct your attention to the handling of cars of fruits and vegetables that pass through your territory

for delivery at Barclay Street. Will you please describe this operation?

A. The cars for Barclay Street come into Manhattan Island in various trains the same as the cars for team track delivery. Some are out at 79th Street, others move directly in the train to 42nd Street. Those that are cut out at 79th Street are switched down to the 65th Street floatbridge and those that move into 42nd street are switched up to the 65th street floatbridge. At the floatbridge these cars are loaded on car floats and handled to Barclay Street by the Marine Department.

Mr. Brown: This man's testimony refers to a map of the tracks of the New York Central on Manhattan Island and I thought that I had left instructions to have that map reduced to exhibit form, but to my embarrassment this morning, I found out when I picked up these papers that that had not been done.

I do have the map here marked and with your permission [fol. 1771] I will file it as a late-filed exhibit. I will have it reduced into exhibit form and have it filed within the next ten days.

Mr. LaRoe: That is all right. You will supply copies of the map?

Exam. Walsh: To all parties?

Mr. Brown: We will do that.

Exam. Walsh: That will be the number following the last number.

Mr. Brown: I now offer this man for cross-examination.

Exam. Walsh: Cross-examination.

Mr. LaRoe: No questions.

Mr. Augello: No questions.

Exam. Walsh: Any question of the witness?

Mr. Loos: I have one.

Cross-examination.

By Mr. Loos:

Q. Can you give me the information about the points in the New York Harbor area on the New York side, served by the New York Central for delivery of freight?

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A. We have stations at 130th Street, 72d Street, 33rd Street, St. Johns Park, which, incidentally, is not a team track station.

Q. What is St. Johns Park? Just a straight house?

A. Carload station. It is a straight house, yes, you might call it.

Q. And they are delivered through the house, not through the tracks?

[fol. 1772] A. That is correct, pier 34, East River, and Barkley Street Station, the latter two being pier stations.

Q. What is pier 34 used for?

A. For all types of carload merchandise.

Q. Is it unloaded before it is delivered?

A. Yes.

Q. By the railroad?

A. Yes.

Q. And what is the Barkley Street station, a similar station?

A. A similar station.

Q. Now, at these other points you named, which are not pier stations, are there both team tracks and freight house facilities at those points, or are there some with one, and not the other?

A. There are team tracks in addition to freight houses at 130 Street, 72*th* Street, and 33rd Street stations.

Mr. Loos: That is all.

Cross-examination.

By Mr. LaRoe:

Q. At which of those stations are fruits and vegetables handled?

A. Fruits and vegetables are handled principally at 33rd Street Station, although they may be handled at any stations under the tariff?

Q. Well, your handling of fruits and vegetables at the pier stations is very small compared with the other railroads, isn't it?

[fol. 1773] A. I wouldn't be in position to say, sir?

Q. Do you know to what extent fruits and vegetables are

handled at your several stations in volume, number of cars? or otherwise?

A. The only pier stations at which we handle any fruits and vegetables is at Barkley Street and we have a figure yes, how much.

Q. How much is it?

A. I don't have it in my testimony.

Q. I will see if I can help you. Are these figures roughly correct, that on Manhattan the New York Central handles 12,144 cars, that is the year 1950, on team tracks, and on piers, only 1,888?

A. For the year 1950?

Q. Yes.

A. I would say that was relatively correct, yes, sir.

Q. How would you break down that 12,144 team track cars as between your several team track yards on Manhattan Island? Just a rough approximation.

A. If this figure includes just fruits and vegetables, I would say that pretty near 85 percent of it was handled at 33rd Street.

Q. And at what other team track yards would the remaining 15 per cent be handled?

Exam. Walsh: 72 or 130th?

The Witness: Yes. It would be 72nd Street, and 130th [fol. 1774] Street. It would have to be but I thought you possibly included our Barkley Street deliveries.

By Mr. LaRoe:

Q. Barkley Street is separate at 1,788 in addition to the one thousand. I am trying to get a picture as to where the other 15 per cent would be handled other than at 33rd Street.

A. I might say in that case that the handling at 33rd Street would even be greater than 85 percent; possibly 90 percent, because there is very little perishable fruits and vegetables handled at 72nd Street.

Q. If we take that 95 percent at 33rd Street and break that down as between vegetables on the one hand and citrus fruit on the other it would again be 90 or 95 per cent vegetables, wouldn't it?

A. I am not in any position to break that figure down.

Q. Well, you do know——

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A. We don't go into it that deeply.

Q. You do know that St. Johns Park is not a place for the delivery of citrus in volume, don't you?

A. That is correct.

Q. And you do know whether a great quantity of the vegetables handled at St. Johns Park, perhaps more than half, are potatoes?

A. We don't handle any perishables at all, to speak of there.

Q. No vegetables at St. Johns Park?

A. No, sir.

[fol. 1775] Q. You mean 33rd Street?

A. What was the question, again?

Q. Of the fruits and vegetables handled at 33rd Street, is not more than half potatoes?

A. I couldn't answer that question, sir. It is just perishables as far as I am concerned from an operating standpoint.

Q. And you can not define the perishables?

A. There are perishables of all types.

Q. You can't break it down any further than that?

A. Not on a figure basis, no, sir.

Mr. LaRoe: That is all. Thank you.

Exam. Walsh: Any further questions of this witness?

Mr. LaRoe: Just one other point that I overlooked.

By Mr. LaRoe:

Q. Can you clarify for us once more the extent to which the yards at which you unload carload freight other than fruits and vegetables at your own expense?

A. At all stations that I mentioned, we have freight stations as well as team track or pier facilities.

Q. I am not talking about pier tracks because you don't unload free of charge at team tracks.

A. No.

Q. Where are the stations, the houses at which you unload freight without an extra charge?

A. As I said before, at all our stations, 130th Street, 72nd Street, 33rd Street, and on the two pier stations and St. [fol. 1776] Johns Park.

Q. And are there any cases where you unload either fruits or vegetables at such stations without a charge?

A. No, sir.

Q. There are not?

A. No, sir.

Q. What are the food products if any that you unload at those stations without an extra charge?

A. Food products?

Q. Yes. Canned goods.

A. Canned goods.

Q. Dairy products, eggs?

A. Yes.

Q. They are unloaded without an extra charge at your Manhattan, at some of your Manhattan stations, are they not?

A. That is correct.

Q. In fact, all of those commodities that you handle, where do you unload them, you do so without charge, do you not?

A. Yes, sir, that is correct.

Q. Do you have any pier stations where such commodities are unloaded by you without charge?

A. Well, any of the commodities we have been talking about may be handled at any of the pier stations if they are so routed under the same circumstances.

Q. As a matter of fact, you would at one of your pier [fol. 1777] stations today unload, for example, citrus fruit juice or tomato juice without any charge whatever for the unloading?

A. That is correct.

Q. But if it happens to be not in the form of a canned juice but in the form of oranges and grapefruit and tomatoes, you would impose an unloading charge on it?

A. It wouldn't be my doing, sir. It would be affected by the tariff. That is all.

Q. The tariff makes that distinction?

Mr. LaRoe: That is all. Thank you.

Exam. Walsh: Any further questions on cross-examination?

(No response.)

Exam. Walsh: Witness excused.

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(Witness excused.)

Exam. Walsh: Next witness.

You were going to file a map. How long do you want to file it?

Mr. Brown: Ten days.

Exam. Walsh: You will file the map in ten days and it will be given a number then.

Mr. Brown: Mr. Haviland.

Exam. Walsh: You haven't testified in this case before?

Mr. Brown: No, he has not.

GEORGE HAVILAND was sworn and testified as follows:

[fol. 1778] Direct examination.

By Mr. Brown:

Q. Will you state your full name?

A. George Haviland, employed by the New York Central as a Float Inspector.

Mr. Brown: Mr. Examiner, this man's testimony has been distributed and I now offer him for cross-examination.

Exam. Walsh: It is agreeable to protestants that it be incorporated in the record?

(No response.)

By Mr. Brown:

Q. What is your full name?

A. George Haviland.

Q. By whom are you employed?

A. The New York Central Railroad Company.

Q. In what capacity?

A. Float Inspector in the Marine Department.

Q. How long have you been in the Marine Department of the New York Central Railroad Company?

A. Twenty-seven years.

Q. Have you always been in the Marine Department of the New York Central Railroad Company?

A. Yes.

Q. Tell us what other positions you have held in the Marine Department.

Q. I started as a deck hand, than a mate. I then went into the offices as an assistant dispatcher, also worked as a [fol. 1779] dispatcher and now hold the position as float inspector.

Q. Are you familiar with the marine operations of the New York Central insofar as placing of cars at Barclay Street Pier?

A. Yes.

Q. Please tell us what that operation is?

A. Cars for Barclay Street move on car floats via either the Weehawken floatbridge or via the 65th Street floatbridge on Manhattan Island. After the carfloat is placed at either of these floatbridges it is loaded with cars by the yard forces and when the float is ready for tow it is towed by a tug to Barclay Street. There is no set tow of these car floats from Weehawken or 65th Street to Barclay. Depending upon the volume of traffic or cars and need for quick delivery and other factors, car floats will move directly from Weehawken to Barclay Street or directly from 65th Street to Barclay Street. However, sometimes a carfloat will be partially loaded at Weehawken and then be towed to 65th Street to be filled out and then towed to Barclay Street.

Other times the car float will be partially loaded at 65th Street, towed to Weehawken to be filled out, and then towed to Weehawken.

Q. What is the carrying capacity of these car floats?

A. Ten cars, twelve cars, fourteen cars, and sixteen cars. We also have two small floats which we sometimes use in this operation.

[fol. 1780] Q. What is the carrying capacity of these two floats?

A. Six cars and eight cars.

Q. When do you use these two smaller car floats?

A. Whenever there is only a small amount of cars on hand or when there is a rush call for delivery of a small amount of cars in addition to the big floats.

Q. What happens as the car float approaches Barclay Street with the loaded cars?

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A. The car float is moored alongside the dock and tied up where it is unloaded by the pier forces. The tug is then released and proceeds to other jobs.

Q. Now, Mr. Haviland, will you tell us what the operation is in handling the empty cars out of the Barclay Street pier?

A. The car floats are handled by tugs out of Barclay Street in a similar manner as the tow into Barclay Street. The car float is towed to either Weehawken or 65th Street where the cars are pulled off and the carfloat made light for other jobs.

Exam. Walsh: Cross examine.

Mr. LaRoe: I have no questions.

Exam. Walsh: The witness is excused.

(Witness excused.)

Mr. Brown: Mr. Jarvis. Mr. Jarvis has been sworn.

W. C. Jarvis was recalled, testifying further as follows:

[fol. 1781] Redirect examination.

By Mr. Brown:

Q. You will state your full name for the record?

A. W. C. Jarvis, address, 466 Lexington Avenue, New York Central Railroad, New York.

Q. Mr. Jarvis, do you have an exhibit to offer in this case?

A. Yes, I have.

Mr. Brown: May we have that exhibit marked for identification?

Exam. Walsh: That will be 150.

(Respondent's Exhibit No. 150, Witness Jarvis, was marked for identification.)

Mr. Brown: This man's testimony and the exhibit marked 150 for identification has been distributed and I now offer this man for cross examination.

Exam. Walsh: It is agreeable to the parties that the statement be incorporated?

Mr. LaRoe: Yes.

By Mr. Brown:

Q. Kindly state your name and business address?

A. My name is W. C. Jarvis. My address is 466 Lexington Avenue, New York Central Railroad Company, New York 17, New York.

Q. In what capacity are you employed by the New York Central Railroad Company?

A. I am a Statistician in the Comptroller's Office.

Q. How long have you held this position?

A. Five years.

[fol. 1782] Q. Have you, at my request, made a study and prepared exhibits with respect to the costs of terminating cars of fresh fruits and vegetables at Pier 17 (Barclay Street, N. Y.) and at the team tracks on Manhattan Island at 33rd Street, N. Y.?

A. I have.

Q. Will you please tell us what exhibit 150 shows?

A. Page 1 of this exhibit, marked Pro. No. 1816 in the bottom left corner, is a summary of terminal costs of handling fruits and vegetables to Pier 17, via Weehawken and 65th Street, as compared with a team track delivery at 33rd Street on Manhattan Island, New York. The cost of placing a car for team track delivery at 33rd Street, New York, amounted to $22.30, as compared with a pier delivery cost via 65th Street, New York, of $38.02, and via Weehawken, New Jersey, of $43.94 per car.

Page 2 of this exhibit marked Pro No. 1817, shows the yard switching costs per car for 33rd street, New York, 65th Street Yard and Weehawken, New Jersey. These figures are arrived at by applying the system engine hour cost to the number of engine hours made during the month of December 1950 at the above named yares, resulting in a cost at 33rd Street of $7.55; for 65th Street Yard $5.72; and for Weehawken, New Jersey, $10.90.

The system engine hour cost was used here in the absence of actual time studies and has the effect of giving the same weight to the team track delivery as well as the pier de-[fol. 1783] livery. This method understates the costs as many small yards are included in the system figure, as compared with the yards involved in this study.

Pages 3 and 4, marked Pro Nos. 1818 and 1819, are state-

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ments showing the formula used in segregating "yard" and "other than yard" expenses for the year 1950. The Yard figure is divided by the system engine hours to arrive at a system engine hour cost as shown on page 2, Line 3.

Page 5, marked Pro No. 1820, shows the detail of the cost of floating operations for the month of December 1950.

Page 6, marked Pro No. 1821, shows the rental and insurance costs per car for Pier 17 (Barclay Street, N. Y.) for December 1950.

Page 7, marked Pro No. 1822, shows the computation in arriving at a non-revenue percentage which is applied to the assigned cost as shown on Page 1.

Page 8, marked Pro No. 1823, shows the computation in arriving at the amount of return on depreciated investment required per car.

Page 9, marked Pro No. 1824, shows unloading costs that were introduced at a previous hearing, and have been brought up to December 1950 on the basis of the wage rate levels that were in effect at that time.

Q. Can you tells us from the Exhibit you have prepared what the difference in cost is to the New York Central of [fol. 1784] handling cars of fruits and vegetables at Pier 17 as compared with the handling of cars of the same commodity at team tracks on Manhattan Island at 33rd Street.

A. Yes.

Q. Tell us what that difference is?

A. Cars to Barclay Street move via two float bridges, Weehawken on the Jersey side of of the Hudson River and 65th Street on the New York side of the Hudson River. As shown on page 1 of Exhibit 150, it costs the New York Central Railroad $38.02 to move a car through the 65th Street Yard, over the 65th Street float bridge, down the Hudson River to Barclay Street.

Via Weehawken it costs the New York Central $43.94 to move a car through the Weehawken Yard, over the float bridge and across the river to Barclay Street. For delivery at the team track on Manhattan Island at 33rd Street it costs the New York Central $22.30 per car to perform the necessary switching and move it through the yard, to the team track. These items of cost do not include the cost of unloading at Barclay Street, which is shown on page nine of the exhibit.

Q. Does your exhibit show the difference in and cost of switching services required on cars delivered at Pier 17 and those delivered at team tracks on Manhattan Island?

A. Yes.

Q. Will you tell us what that difference it?

A. Pages 1 and 2 of the exhibit show this difference to be [fol. 1785] as follows: At 33rd Street it is $7.55 per car. To Barclay Street via 65th Street it is $5.72 per car and via Weehawken $10.90 per car.

Q. From the study you have made and the exhibits you have prepared can you tell us whether there is any difference in costs resulting from the fact that the pier delivery does not require an investment in team track facilities?

A. Page 8 of the exhibit shows the computation of the amount required per car to provide return on depreciated investment in property. Lines 1 through 6 show the investment less depreciation as of December 31, 1950, in land, track and structures, and taxes of that portion of New York Central facilities used in switching and placing cars of fruits and vegetables for team track delivery on Manhattan Island. No investment figures for land or structures are shown in connection with 65th Street or Weehawken. Therefore, a difference in cost of $13.58 would result if only the investment in team track facilities is considered.

Exam. Walsh: Cross-examine.

Cross examination.

By Mr. LaRoe:

Q. You have heard the testimony of the previous witness to the effect that such commodities as canned goods and canned fruit juices, canned oranges, canned grapefruit juices are unloaded at some of your stations including your piers without any extra charge. Did you hear that testimony?

[fol. 1786] A. I did.

Q. Would you say there is any difference in cost or do you not know as between those commodities and the commodities that are here involved?

A. I don't know.

Q. You are not in position since you don't know, to say

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it costs any more to unload the citrus fruit than it does the citrus juice?

A. No. I don't know that, either.

Mr. LaRoe: I think that is all.

Exam. Walsh: Any further questions of the witness?

Cross examination.

By Mr. Wells:

Q. Mr. Jarvis, you indicated that you made a study for the preparation of your exhibit No. 150. What was the period of the study?

A. December, 1950.

Q. The calendar month?

A. Yes.

Q. And what study did you make? Was it a study of the operations or was it simply a compilation and computation from office records?

A. It was a compilation of office records.

Q. You made no study of the actual operation?

A. No, sir.

Q. Now, on page 9 what do you mean "test period, July 25, to July 30?"

[fol. 1787] A. That was the last hearing, if you remember.

Q. In other words, all that amounts to is that you took the data from the former exhibit in this proceeding and then expanded it on the basis of a 1950 adjusted labor cost, is that correct?

A. That is correct.

Q. So that no additional operational study of any kind was made for the month of December in connection with that particular quantity of units of fruits and vegetables?

A. No, sir.

Q. This was just vegetables though, wasn't it?

A. That is correct.

Q. There were no fruits involved in it at all?

A. No fruits whatever.

Q. Did you actually deliver any fruits at Barkley Street, Pier 17, in the month of December, 1950?

A. No, sir.

Q. You did not, no fruits of any kind?

A. No. Vegetables but not fruits.

Q. What vegetables—the only one I see there is onions; is that the only vegetable you handled at Barkley Street?

A. In December, 1950, that is correct.

Q. I didn't understand your answer. I am sorry. What was it?

A. December 1950, that is correct.

Q. The only vegetable you handled was onions?

A. Yes.

[fol. 1788] Q. Is that all the vegetables you ever handled at Barkley Street pier?

A. You mean during that period or some other period?

Q. Any time during the year.

A. No, sir.

Mr. Wells: I think that is all.

Exam. Walsh: Any further questions?

Mr. Augello: I have a question.

Cross examination.

By Mr. Augello:

Q. What other vegetables do you handle at Barkley Street, besides onions?

A. What period are you speaking of?

Q. The entire year of 1950.

A. Well, to my recollection, I think there was a carload of pears came in there, if I remember right, or something like that.

Mr. LaRoe: A whole carload?

The Witness: Yes.

By Mr. Augello:

Q. Did you handle potatoes?

A. Yes. We handled potatoes.

Q. Approximately how many cars of potatoes would you handle in the year 1950?

A. I don't know.

Q. Do you know how many cars of onions you handled in the year 1950?

A. No, I don't know.

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[fol. 1789] Exam. Walsh: Do you know what percentage of the unloading of fruits and vegetables onions constituted? Just approximately.

The Witness: I would say, you mean during the year 1950?

Exam. Walsh: Yes.

The Witness: I would say 65 percent.

By Mr. Augello:

Q. 65 percent are onions?

A. Yes.

Q. How about the other 35 percent?

A. Potatoes.

Q. And to your knowledge only one carload of pears?

A. Pears.

Mr. Augello: Thank you.

Exam. Walsh: Any further questions?

Mr. Loos: I have a question.

Exam. Walsh: Mr. Loos.

Cross examination.

By Mr. Loos:

Q. In your yard expenses, have you simply averaged the yard expense on the basis of the total number of cars, regardless of the character of commodity loaded in those cars?

A. Are you speaking, Mr. Loos, of the team track or the pier delivery?

Q. Whatever the yard may be. Do you make any distinction within that yard as between commodities that are fruits and vegetables and commodities of some other character?

A. No.

[fol. 1790] Q. So that your yard expenses represent an average cost per loaded car for all the cars handled in that particular yard?

A. Yes, sir.

Q. And in your floating expense, is the basis of that simply the dividing of the total number of cars floated into the total expense, without endeavoring to differentiate be-

tween the tugboat time or the car float time at different points?

A. That entails the whole harbor. That entails all floating.

Q. In other words, at page five of your exhibit, 9,318 cars, is that all of the cars floated by you, or is that just the cars floated to these particular points?

A. That is all the cars floated in New York Harbor.

Mr. Loos: Thank you.

Exam. Walsh: By the New York Central?

The Witness: By the New York Central.

Mr. Loos: That is all.

Exam. Walsh: Any further questions?

(No response.)

Mr. Brown: I offer exhibit 150 for identification in evidence.

Exam. Walsh: Exhibit 150, Witness Jarvis, is received in evidence.

(Respondent's Exhibit No. 150, Witness Jarvis, was received in evidence.)

Exam. Walsh: Witness excused.

(Witness excused.)

[fol. 1791] Exam. Walsh: Next witness.

F. H. Clark was sworn and testified as follows:

Mr. Miller: This witness is in addition to the information requested in the Commission's order, Mr. Examiner, you will recall that at our pre-hearing conference the protestants indicated that they would like to have some information as to comparative turnaround time on cars to the piers, as contrasted with cars to team tracks, and it was in response to that request that Mr. Clerk's statements and exhibits have been prepared.

The Witness: My service with the Pennsylvania Railroad covers a period of over 42 years, of which approximately 12 years was in the Accounting and Statistical sec-

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tions of the Operating Department. For a number of years I have been assigned to special duty under the supervision of the Superintendent of Freight Transportation, and the Chief of Freight Transportation. By their direction I have made many special studies and investigations of system-wide scope, requiring an intimate acquaintance with operating practices on the Pennsylvania Railroad.

Cars of standard gauge, with limited exceptions, are freely interchanged among the railroads of the United States. The user of railroad controlled cars, other than the owner, must compensate the latter on either of two bases—on an allowance per day per car (per diem basis) or on a rate per car per mile (mileage basis). The last method can be [fol. 1792] employed by railroads only for carrier owned refrigerator and tank cars. To adopt the mileage basis of payment such lines must advise the Secretary of the Operating Transportation Division of the Association of American Railroads of their desire to place their refrigerator cars on a mileage basis:

Atchison, Topeka and Santa Fe, Bangor and Aroostook, Boston and Maine, Canadian National Canadian Pacific, Delaware, Lackawanna & Western, Denver and Rio Grande Western, Grand Truck Western, Illinois Central, Louisiana and Arkansas, Northern Pacific.

Practically all of the railroad-controlled refrigerator cars in the United States are owned by the railroads shown in the fore-going list.

Freight cars of other than railroad ownerships, generally designated as private cars, are handled under the provisions of the Association of American Railroads Mileage Tariff, Series No. 7, which provides for the mileage basis of compensation with certain provisions applicable under specified conditions as to the equalization of empty and loaded mileage. The rates quoted in the aforementioned tariff are repeated in Rule 18 of the Code of Per Diem Rules adopted or concurred in by the vast majority of the railroads of the United States. At the present time, the applicable mileage rate for the commonly used refrigerator cars is 3 cents per mile. Some refrigerators built for particular purposes or of special construction are han- [fol. 1793] dled under a lower mileage rate.

In computing the mileage for refrigerator cars destined to New York no allowance is made for water movement between the termini of railroads in New York Harbor.

On cars destined to New York and Philadelphia the mileage rates used in computing the compensation to the owner of the refrigerator car does not include any remuneration for time cars are held at those terminals.

A Code of Per Diem Rules, along with the appendices thereto, governs the settlement for the use of railroad owned freight cars between all common carrier railroads.

Exhibit No. 151 attached hereto, consisting of two sheets, records the results of a study made to determine the average turn-around time of cars loaded with fruits and vegetables that were unloaded at each of three Pennsylvania Railroad stations in the New York-Jersey City area. Those stations are Piers 27-28 and Team Tracks at 37th Street in New York proper, and the Team Tracks at the "Ball Ground" in Jersey City.

As representative of the handling of cars unloaded at Piers 27-28 and the "Ball Ground", Jersey City, the period from Sunday, April 1 to Thursday, April 5, 1951, both inclusive, was taken. In this way an entire perishable market week was covered. Because of the limited number of perishable shipments received at 37th Street it was necessary to include an entire year's receipts so as to secure a [fol. 1794] reasonably comparable period of time and volume of perishable traffic. 1950 was taken since it was the latest full year.

Sheet one of the Exhibit compares the turn-around time involved in effecting deliveries at Piers 27-28 with that required in those cases where such deliveries are made at team tracks in the New York-Jersey City district. At items 3(a) and 4(a) the total times and the average time per car respectively, from the arrival loaded at Harsimus Cove Yard, Jersey City, until unloaded at Piers 27-28 or the team tracks studied are shown. At Items 3(b) and 4(b) the total time and the average time per car respectively, covering the time from the unloading of the shipments until the dispatchment of the empty cars from Harsimus Cove Yard, Jersey City are recorded. At Items 3(c) and 4(c) the total elapsed time and the total time per car respec-

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tively, from the arrival loaded at Harsimus Cove Yard until dispatched empty from that yard are set forth.

The results as indicated by Item 4(c) are as follows:

	Days	Hours	Minutes
Piers 27-28	2	7	55
Team Tracks	4	15	5

At sheet 2 of Exhibit No. 151 will be found the basic data supporting the figures appearing at sheet 1, separated for each of the three stations studied. A further breakdown of Items 3(b) and 4(b) of sheet 1 has been made in the case of 37th Street so as to show the total time and the average time per car from the time unloaded until returned to [fol. 1795] Harsimus Cove Yard empty, such statistics being indicated at Items 3(b-1) and 4(b-1) respectively, and separately the total time and the average time per car from the time returned empty to Harsimus Cove Yard until dispatched empty from that yard.

These latter data are recorded at items 3(b-2) and 4(b-2) respectively. Items 3(b) and 4(b) are so subdivided in the case of 37th Street shipments because the operation necessary to serve that station varies considerably from that incident to the handling of shipments destined to Piers 27-28 and the "Ball Ground", Jersey City.

In serving 37th Street, as the loaded cars arrive at Harsimus Cove Yard, Jersey City, they must be classified, handled, and rehandled if necessary, loaded on to car floats through the transfer bridges at Harsimus Cove Yard, floated across the Hudson River to 37th Street float bridge, at which point the cars must be removed from the car floats, switched out, and placed on the team tracks. After being made empty the cars are handled similarly in reverse order.

The longer time indicated at 37th Street than at the other two stations included in the exhibit is brought about by a number of factors, among which may be mentioned the longer time taken in unloading of cars at 37th Street: the intervention of legal holidays; the fact that no yard crews are maintained at 37th Street on Sundays or holidays, and but one yard crew on Saturdays, since the service require-

[fol. 1796] ments do not justify a greater complement of switching power or crews; by the necessity of disposing of refused shipments from the car by sale or otherwise, a procedure made much more difficult by the intervention of Saturday, Sundays and holidays.

In contrast with the aforementioned reasons for longer detentions to cars unloaded at 37th Street the operation to and from Piers 27-28 is a more expedited handling because loaded cars floated to the piers must meet the market hours. The cars cannot be removed from the floats, but the lading must be promptly unloaded to the piers and the floats and empty cars returned quickly to Harsimus Cove Yard. Any other procedure would make the commodities unavailable for display and auction purposes.

Since both the loaded and empty cars must pass through the transfer bridges at Harsimus Cove Yard, because of the much greater number moving to and from Piers 27-28, compared with the shipments destined to 37th Street, the Piers 27-28 equipment must be removed promptly from the tracks serving the transfer bridges, otherwise such bridges could not be used for the additional perishable shipments arriving eastbound and the empty cars returning westbound as well as consignments of perishable and other freight destined to or received from other terminal points in New York harbor, located on Manhattan or elsewhere.

Where the comparison is made between 37th Street and the "Ball Ground", Jersey City, it will be found that be- [fol. 1797] cause of the locations of the "Ball Ground" team tracks with respect to the rest of the Harsimus Cove Yard layout, it is possible to classify the loaded cars to tracks adjacent to or in proximity to those team tracks and later switch out and place such cars in the "Ball Ground" area. Correspondingly, the empty cars, while rehandled more than once, can be switched within the area of Harsimus Cove Yard, permitting a coordination of operations that are impractical when service in two disinct yards are involved, as is the case when consignments are destined for land delivery at 37th Street, New York.

During the year 1950 the turn-around time of refrigerator cars for the United States as a whole was 24.76 days. This information is published by the Association of American Railroads in their form CS-54-1B. This turn-around

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time, of course, represents the average time from point of loading until return of the car.

Florida traffic normally arrives in the New York district on the third afternoon after dispatchment from origin. California traffic ordinarily arrives on the ninth day after forwarding from origin. Assuming a return empty movement of equal time, and considering a full calendar day rather than the actual time of dispatchment and arrival, the total road haul would consume six days in the case of Florida traffic, and eighteen days in the case of California perishables.

If these figures are deducted from the average turn-[fol. 1798] around time of refrigerator cars for the United States as a whole, which was approximately 25 days during the year 1950, we would arrive at a figure of 19 days as representative of the terminal time in the case of the Florida traffic, and 7 days in the instance of the California business, or, in other words, 9-½ days at each terminal in the first instance, and 3-½ days at each terminal for the California perishables.

By Mr. Brown:

Q. Mr. Clark, in your statements you have made some comparisons of total turnaround park from origin of perishables in California and Florida with average turnaround times for refrigerator cars in the United States.

Do you have any additional information which would show a comparison of the turn around time in New York Harbor as compared with the total turnaround time for cars originating in Florida and California and returning to those points?

A. I have.

Mr. Wells: I object to that because the premise on which the witness is proceeding in the computation of the turn around time is not realistic. He is using a national average, and then attempting to say that the terminal time in one instance is a certain figure and the terminal time in the other instance is another figure, not from the actual turnaround time on the particular movement but from the United States average as a whole.

Mr. Miller: Mr. Well's comment is perfectly justified

[fol. 1799] with respect to the statement which was circulated and it was not intended that that comparison with average turnaround times throughout the United States would have any definite relevance as with respect to our figures as to turnaround time at these two points. It was intended as a very rough approximation to give some idea of what this turnaround time out of New York, what part it had to play in total turnaround time for cars from origin back to origin, and I freely admit it is very poor comparison. This question is intended to improve that comparison somewhat and to ask whether Mr. Clark has any definite information as to total turnaround time to Florida traffic and California traffic.

Mr. Wells: I have no objection to the facts being put in the record but I was objecting to your comparison with that so-called comparison that you have in the printed statement where it purports to show that the turn around time, for example, on the Pennsylvania Railroad in a movement from Florida, is nineteen days terminal time, as against nine and a half days with your competitors and yourself averaged out in a movement from California.

Mr. Miller: What are you talking about?

Mr. Wells: I am referring to the fact that——

Mr. Miller: Where is it?

Mr. Wells: On the fourth page:

"We would arrive at a figure of nineteen days as representative of the terminal time in the case of Florida [fol. 1800] traffic and seven days in the instance of California business."

Mr. Miller: That speaks for itself. They are pure mathematical computations.

Mr. Wells: You are not contending that those are representative of the terminal time from the two origins?

Mr. Miller: No. By no means.

Exam. Walsh: With Mr. Miller's explanation you are willing to withdraw your objection, are you?

Mr. Wells: I don't understand just exactly what he is driving at but I respectfully submit that as conceded by Mr. Miller, the computation of the nineteen days and the seven days is not representative of the respective terminal time.

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Mr. Miller: I think that is obvious on the fact of the statement.

Mr. Matson: Why don't we leave out the last paragraph then?

Mr. Miller: I would prefer to leave it in. I think it is a reasonable approximation.

Exam. Walsh: Let it go in.

The Witness: We had better get an exhibit number on here.

Mr. Wells: I move to strike the last sentence.

Mr. Miller: No. I don't want to strike any of it. Admittedly, it isn't a representative study but what I have done is to make and what I have asked Mr. Clark to do is to give [fol. 1801] some idea of how this terminal time in New York compares with a very rough computation, based on a national average figure, and the only purpose of it is to give the reader a very rough approximation of where this New York turnaround time would stand in the national picture.

Exam. Walsh: All right. Leave it in.

Mr. Miller: For identification, Mr. Examiner, I would like to have——

Exam. Walsh: 151 is the next exhibit.

(Respondent's Exhibit No. 151, Witness Clark, was marked for identification.)

By Mr. Miller:

Q. Now, to get back to my question, have you made additional computations, Mr. Clark in which you compare this turnaround time, as shown in your exhibit 15, with actual turnaround times from Florida and California?

A. I have.

Q. Will you state the results of those computations and the basis for them?

A. In the statement previously submitted covering the turn-around time of cars of perishable unloaded at Piers 27-28 and 37th Street, New York and "Ball Ground" Jersey City, I compared at sheet 4 the approximate turn-around time of cars originating Florida and California with that for refrigerator cars in the United States as a whole. Since the submission of that statement I have selected at random a few cars, included in basic data used in the study of the

[fol. 1802] turn-around time of cars unloaded at the three stations studied, and ascertained the waybill dates for 17 shipments originating in Florida and eight shipments originating in California and Mexico. I then computed the elapsed times from the waybill dates for these shipments until the dates unloaded in the New York-Jersey City area, counting both the first and last days as twenty-four hours in each instance. Separately, I calculated the elapsed time from the waybill dates, until the empty cars were dispatched from Harsimus Cove Yard, Jersey City. Seven of the 17 cars originating in Florida were unloaded at the "Ball Ground" Jersey City and ten at Piers 27-28.

Three of the eight cars originating in California and Mexico were unloaded at the "Ball Ground" Jersey City and five at piers 27-28. The statistics are summarized in the statement below:

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[fol. 1803]

Corrected

Originated	Unloaded at	No. Cars	Elapsed Days From Waybill Date Until Unloaded	Elapsed Days From Waybill Date Until Empty Car Dispatched From Harsimus Cove Yard	Avg. Time per Car From Waybill Date Until— Unloaded	Dispatched Empty From Harsimus Cove Yard
Florida	"Ball Ground", J. C.	7	66	77	9.43	11.00
Florida	Piers 27–28, N. Y.	10	58	72	5.80	7.2
Total		17	124	149	7.29	8.76
Calif.-Mexico	"Ball Ground", J. C.	3	41	46	13.67	15.33
Calif.-Mexico	Piers 27–28, N. Y.	5	67	70	13.40	14.00
Total		8	108	116	13.50	14.50

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[fol. 1804] Under tariff provisions receivers of perishable in New York have a holding privilege whereby cars of perishable may be kept in Jersey City pending disposition. Perishables from west of the Mississippi River and all citrus, regardless of origin, are held on arrival at Harsimus Cove Yard unless previously received release orders are on hand, and other perishables from the South are held if hold orders are received prior to the arrival of the cars. Likewise, cars of perishable for Piers 27-28 arriving on Fridays and Saturdays must be held at Harsimus Cove Yard for the Sunday night market since that is the first market after Thursday night.

If allowance is made for such time in the foregoing statement the averages there indicated would be changed to the following figures:

Origin	From Waybill Date Until Unloaded Less Hold Track Time	From Waybill Date Until Dispatched Empty From Harsimus Cove Yard less Hold Track Time
Florida	6.53	7.94
Calif-Mexico	11.75	12.75

If the averages in both statements outlined above are doubled, on the assumption that the empty return movement would entail the same time as the loaded handling, and those results compared with the turnaround time for refrigerator cars in the United States as a whole, then we would have the following:

[fol. 1805]

From Waybill Date Until	Total Turnaround Time Shipments from Florida	California	U. S.
1. Unloaded NY-JC	14.70	27.00	24.76
2. Dispatched empty from Harsimus Cove	17.52	29.00	24.76
3. Unloaded NY-JC less hold track time	13.06	23.50	24.76
4. Dispatched empty from Harsimus Cove less hold track time	15.98	25.50	24.76

When consideration is given to the fact that the average for the United States as a whole includes all movements in the United States, between short haul points as well as between the extremities of the country, whereas we have selected for comparison only shipments originating in the most distant perishable producing areas of the United States, it is apparent that the services accorded by the railroads in the New York-Jersey City area are favorable to

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the trade. None of the foregoing calculations make any deductions for diversions, reconsignments, or time on hold tracks enroute from origins to destination. They do, however, include a proportion of the originating terminal times included in the interval between the billing dates and dispatchments of the cars.

When comparison is made with the times from billing dates until dispatchment empty from Harismus Cove Yard there is included a time factor from unloading until for- [fol. 1806] warding empty that belongs in the empty return movement. Doubling those particular averages when comparing with the United States compound these errors.

By Mr. Miller:

Q. Mr. Clark, do you know when the peak periods for number of unloads on piers 27 and 28 are?

A. During the winter months.

Q. What do you mean by winter months?

A. Well, in this case, it would probably be February or March.

Mr. Miller: That is all from this witness, Mr. Examiner.

Exam. Walsh: Cross-examine.

Cross-examination.

By Mr. LaRoe:

Q. I am not sure I get your major philosophy here. I tried to follow you. Are you taking the position here that the service rendered on the fruit and vegetable cars here involved is better in quality than the service rendered on other refrigerator car traffic?

Mr. Miller: We are not taking any position of that sort.

Mr. LaRoe: Thank you for that.

By Mr. LaRoe:

Q. Now, may I ask you, you say in your statement here: "Freight cars of other than railroad ownership generally designated as private cars are handled under the provisions of the mileage tariff," and that is the applicable mileage rate, it is three cents a mile.

I take it that you deduct from that that the number of days required in transit has absolutely no effect on the [fol. 1807] railroad cost; is that your position?

A. It does not affect the cost, such as has been presented in this hearing.

Q. Of course, it represents cost to somebody, but your point is that it doesn't represent cost to the railroads?

A. It does not represent cost to the railroads, for such cost studies as has been here presented.

Q. But you would admit the economic waste, if there were an undue detention of cars, regardless of whether the railroads bear that cost or not?

A. I don't know whether there is an economic waste.

Q. When cars are not used?

A. We have in railroad operation periods of time when we have a surplus of equipment. That is part of the railroad game, not only in refrigerators, but hopper cars, box cars, at times.

Q. How long has it been since you had a shortage, a surplus of refrigerator cars?

A. It hasn't been too long. There has been a particular demand in the last year but there have been times. Furthermore, the refrigerator car element surplus——

Q. I am sorry, but you didn't answer the question.

What is the latest month that you can remember when there was a surplus of refrigerator cars?

A. I don't have any month definitely in my mind. I would [fol. 1808] have to refer to the "AAR" statistics to give you that actual months.

Q. What is the last year when you remember you had a surplus of refrigerator cars, or the last season when you had a surplus of them?

A. I have no recollection definitely as to that. That is the reason I don't want to be specific but in general I adhere to the statement as made to you that there have been times.

Furthermore——

Q. Just a minute.

A. I want to finish my answer, too.

Q. You may finish your answer, but I have got to pin you down on this: have you finished your answer?

A. Well, I don't know. You interrupted me twice. I wanted to bring out the point that refrigerator cars are

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generally of private ownership, the majority of them, so the surpluses or shortages are something that involves not only the railroad but the owners of those cars.

Q. Have you known of any surplus of refrigerator cars in the year 1950?

A. I don't think there were any.

Q. Have you known of any surplus in the year 1949?

A. Now you are going back to the point where my memory does not carry me.

Q. You have a longer memory than that, haven't you?

[fol. 1809] Mr. Miller: Objection. The witness has said three times now that he didn't recall precisely when the last surplus was. We are not interested in this witness' powers of recollection. All we are interested in here is the facts. If he says he does not know, he does not know.

By Mr. LaRoe:

Q. Do you know whether there was any period in 1949 when there was a surplus of refrigerator cars?

A. I am not going to answer that question that I know or don't know, for the reason that you are trying to pin me down to specific figures and I do not carry them in my mind. No man would; no operating man can tell you surpluses as of a particular time without referring to his statements, which shows that fact.

Q. And, of course, you could not take any year prior to 1949 and state as to any such year whether there was a surplus of refrigerators?

A. Not at the moment.

Q. That satisfies me.

Mr. LaRoe: That is all.

Exam. Walsh: Any further questions?

Cross-examination.

By Mr. Wells:

Q. Mr. Clark, how does the Pennsylvania Railroad render service that requires the use of refrigerator cars insofar as the provision of equipment is concerned?

A. How do they?

Q. Yes.

[fol. 1810] A. By contract.

Q. With who?

A. For instance, fruit growers express cars.

Q. As a matter of fact, the Pennsylvania Railroad owns about a third of the stock in the Fruit Growers' Express Company, does it not?

A. Not quite a third. We own a good share of it.

Q. So that the point you were making a moment ago in answer to Mr. LaRoe was that regardless as to whether there may be a loss of the fruit Growers' Express Company, which is a subsidiary of the Pennsylvania Railroad and the Atlantic Coast Line Railroad, and the other railroads that participate in the particular movement, regardless of what loss that company may sustain, there is no direct loss to the Pennsylvania Railroad Company in its corporate capacity when a refrigerator car whose legal title is somewhere else sits idle and not in movement, is that your point?

A. That is a pretty long question. I don't know whether you are trying to get the legal sense out of it or just the practical sense.

Q. I am trying to find just exactly — is your position about there being no cost to the Pennsylvania Railroad Company in connection with refrigerator cars that are not turned around fast.

A. In the——

[fol. 1811] Mr. Miller: Let me answer that one.

Mr. Wells: The witness is testifying and I want the witness' answer.

Exam. Walsh: This witness is qualified to answer. This witness is capable to answer. He can answer this question and if he is not able to answer we will have your views.

Mr. Miller: If Mr. Wells will ask for a statement of fact I want this witness to answer. If he is asking for a statement of the position of the respondents in this case, I want to answer because that is my function. I don't think it is a proper question to the witness.

Mr. LaRoe: May we have the question read?

Mr. Wells: I submit it is proper cross examination on the direct testimony this particular witness gave.

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Mr. Miller: It is not a factual question at all.
Exam. Walsh: Read the question, please.

(Question read.)

Exam. Walsh: Now, he is addressing it to Mr. Clark.
Mr. Wells: Yes, sir.
Exam. Walsh: He said, "Your position"; he didn't say the position of the Pennsylvania Railroad or the carriers in general. Now, may you answer that?
The Witness: My statement, Mr. Wells, was that insofar as these costs that have been presented in this case are concerned, the time element in relation to refrigerator cars [fol. 1812] does not enter into the picture. Now, inferentially, if the Pennsylvania Railroad is directly connected with the earnings of the Fruit Growers' Express, that is an entirely different thing.

By Mr. Wells:

Q. Well, so far as the Fruit Growers' Express Company is concerned, it is simply a general situation of the railroads, including the Pennsylvania Railroad, isn't it?
A. That is correct.

Mr. Donadio: That is a question of law. I object to that question.
Mr. Wells: There is a question of fact, whether it is such an agency.

By Mr. Wells:

Q. What did you say the average turnaround time from Florida was?
A. This last statement?
Q. I want whatever the fact is, if you can give it to us at the present time, but I am getting at the point as to the assumption you indulged in as to filing out and determining the turnaround time.
A. Well, I am not certain I am going to give you the answer you are seeking because I am not sure I understand your question.
Q. What is the average turnaround time of refrigerator cars from Florida to New York City?

A. As computed by the method which I have just mentioned, I have it on two bases, and including two unloading points; namely, the "Ball Ground" at Jersey City and at [fol. 1813] piers 27, and 28, New York; the check of the 17 cars which I made indicated an average time per car from waybill date to the unloading date as 14.70, from the waybill date until dispatched empty from Harsimus Cove Yard, 17.52, without any deduction for hold track time.

Q. And does that include an actual determination as to the empty return movement of those cars?

A. It does not. It was determined in the manner I told you. I doubled the time loaded.

Q. Do you have any facts whatever to submit of record to show whether that assumption on your part is supported by the actual facts?

A. The actual fact would be probably a lesser figure than this.

Q. You mean a lesser figure in what respect?

A. From what I just read to you.

Q. You think the average trunaround time then from the day of loading in Florida to the day of unloading in New York and return empty to point of origin in Florida would be less than the 14.7?

A. Yes, sir.

Q. And on what do you base that statement?

A. Because the percentage of empty to loaded movement is not a hundred.

Q. What is that percentage?

A. It varied. It will run in the neighborhood, anywheres from maybe five to 91 or 92, something like that, depending on what time you take.

[fol. 1814] Q. So that you are not stating that in your opinion the representative terminal time on traffic from California is a different figure than the representative terminal time at New York of traffic from California?

A. You mean as to my method of calculating?

Q. I mean as to the question I asked you.

A. I don't understand your question. I will have to understand it before I can answer it.

Q. Specifically, you stated in your sworn testimony that the representative time, or a figure of nineteen days, is rep-

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resentative of the terminal time in the case of the Florida traffic. Is that true?

A. On the basis as there set forth it is true, with the qualification.

Q. Is nineteen days representative of the terminal time in the case of Florida traffic?

A. On the basis as stated in my statement which you are quoting, it is.

Mr. Miller: Mr. Wells, I think you didn't hear the witness correctly. I think that nineteen-day figure was turnaround time, wasn't it? Not time in New York Terminal.

Mr. Wells: Quote: We would arrive at a figure of nineteen days, as representative of the terminal time in the case of the Florida traffic, unquote.

Mr. Miller: I see your point now. I didn't understand you.

Mr. Wells: It is on page four of his prepared statement.

[fol. 1815] By Mr. Wells:

Q. And then you compare that with seven days, in the case of California and I am asking you, are those two figures contained in your testimony representative in your judgment of the actual terminal time on Florida traffic and California traffic?

A. They are not the actual time and it is so stated. The basis for it is there. That is one reason I gave this additional statement which has better foundation in fact.

Q. Well, as a matter of fact, the prepared statement doesn't have any foundation of fact, does it?

A. Which prepared statement?

Q. The one that you presented, Mr. Clark; page four, the one I have been talking about.

A. I believe Mr. Miller has given you a full explanation of the purpose why that was put in, and certainly there is nothing hidden there at all. It is set right out in front of you as to how it was determined. Under the short time I was given, I didn't get into this case, but until a few weeks ago, and I couldn't give you anything better at that time, but in the interval I did work up a few cars here. I would have done it for more, had we had longer time.

Q. You don't know of any factual basis for making the

statement those figures given there are the actual terminal time.

A. They are not the terminal time.

Q. Are they representative of the terminal time?

[fol. 1816] A. Outside of the statement.

Q. As a matter of fact.

A. No. They are not.

Mr. Wells: Thank you.

The Witness: My additional statement proves that.

Exam. Walsh: Any further questions of the witness?

Mr. Loos: I have a question.

Exam. Walsh: Mr. Loos.

Cross-examination.

By Mr. Loos:

Q. You couldn't recollect any period when there had been a surplus. Can you recollect within recent years periods when there have been shortages of refrigerator cars?

A. This last year there have been shortages.

Q. Now, you referred to private ownership of refrigerator cars. By that, you didn't mean it was shipper ownership, did you?

A. Yes, they could be—well, we speak of them carelessly perhaps, in railroad work, any other than a railroad-owned car, we call a private car.

Q. That includes the car lines, like the Pacific Fruit Express Company and the Fruit Growers Express Company, does it?

A. Yes.

Q. You refer to those as private cars?

A. Yes.

Q. And also the packers cars?

A. Yes, sir.

[fol. 1817] Q. And of course those are shipper-owned cars, are they?

A. That is right.

Q. Did you ever hear*d* of a fruit or a vegetable from California moving in a shipper-owned car?

A. No, I have not.

Q. When you speak of the delay, of any delay, in New

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York terminals of a refrigerator car not costing any money, you mean by that do you not that it does not cost the Pennsylvania Railroad Company any money because it is a mileage basis and not a per diem basis?

A. In the sense of the cost studies as here presented, yes.

Q. Isn't that all you mean, the extra days aren't paid for by the Pennsylvania Railroad because it is not on a per diem basis, it is on a mileage basis?

A. In the cost sense, that is correct, yes.

Q. You don't mean to say it is no disadvantage to the Santa Fe Railroad, for example, if a Santa Fe refrigerator car is held in New York fifteen or twenty days during a period of car shortage?

A. I am glad you put that qualification in there, because there could be some advantage of having it in New York, if they had too many cars on their lines.

Q. I said in a period of car shortage.

A. I know, I agree with you.

Q. And if the car shortage is so severe that it results in [fol. 1818] the failure to move traffic that otherwise would have moved if there hadn't been a car shortage, and thereby the Pennsylvania Railroad is deprived of a car of fruit that it otherwise would have received, isn't that a disadvantage to the Pennsylvania Railroad?

A. I imagine our traffic people would say so.

Mr. Loos: That is all.

Exam. Walsh: Any further questions of this witness?

Mr. Hoffman: I have a few questions.

Exam. Walsh: Mr. Hoffman.

[fol. 1819] Cross-examination.

By Mr. Hoffman:

Q. You have indicated here very plainly, Mr. Clark, that insofar as these studies are concerned they do not reflect any difference in costs to the terminating carriers by reason of the acceleration, if any, of the turn-around time; isn't that correct?

A. They do not include and shouldn't include——

Q. Did you give any study to the question of the benefits that might accrue, financial benefits that might accrue to that carrier by reason of an acceleration in the turn around time?

A. I think we just covered that a minute ago here in other ways.

Q. Isn't it true that in so far as the shipper is concerned, you do use the time element for the purpose of assessing charges?

A. That is right.

Q. And——

A. I suppose you have in mind demurrage?

Q. Yes.

A. Yes.

Q. In the case of demurrage on the terminal end, would that accrue to the particular railroad having control of the car at that time?

A. It would.

Q. And to that extent the railroad would be benefited?

A. Well I don't know as it would be benefited.

Demurrage is more or less of a penalty charge anyway. [fol. 1820] It isn't because we want it.

Q. But the railroad receives that charge without making any counter compensation to the company that may own the car?

A. You mean in the way of reimbursement?

Q. In the way of reimbursement.

A. That is right.

Q. And to that extent it is benefited?

A. Which?

Q. The terminal carrier.

A. It is taking in money. I can't agree with you that it is necessarily benefit.

Mr. LaRoe: We will assume that is a benefit.

The Witness: You will have to assume it. I won't agree to it.

Mr. Hoffman:

Q. Now on page 2 of your statement you say "Practically all of the railroad controlled refrigerator cars in the United

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States are owned by the railroads shown in the foregoing list."

A. That is right.

Q. What percentage of the total refrigerator cars are owned by railroads?

A. 98.2 of these particular ones.

Q. I mean of the total.

A. All privately owned, and all—I don't know.

Q. Wouldn't it be a very small percentage?

[fol. 1821] A. I just said I didn't know.

Q. You have no idea?

A. No. I don't know.

Q. No estimate?

A. No estimate.

Mr. Hoffman: I think I could answer that.

By Mr. Hoffman:

Q. The largest owner of refrigerator cars in the United States is the Pacific Fruit Express, isn't that true?

A. Of the railroads?

Q. Of all refrigerator cars in the United States.

A. Well not knowing what percentage the railroads are of the total I can't answer your question.

Q. You have heard of Pacific Fruit Express?

A. Indeed yes. In fact, I can tell you how many cars they are that they have but I don't know the grand total ownership you are trying to get me to give a percentage based on.

Q. In the next sentence you state "Freight cars of other than railroad ownership generally designated as private cars are handled under the provisions of the association," and so forth. Do you mean they are refrigerator cars or do you mean freight cars?

A. I mean refrigerator cars.

Q. So the statement "Freight cars" should be changed——

A. Wait a minute. Maybe I answered you a little too hastily.

Let's look at the tariff; cars owned by shippers.

[fol. 1822] Q. Does that include refrigerator cars?

A. The tariff reads mileage allowances and rules govern-

ing the handling of, also payment of mileage and equalization of mileage on cars owned by shippers.

Q. And that includes refrigerator cars as well as ordinary freight cars?

A. Yes.

Q. Well now you made a study, did you, of the number of cars that might be held on the Jersey side, pursuant to orders of the shippers, as compared with a number of cars that are not directed to be held?

A. No. I didn't compare that with anything but in working up this statement, or rather the statement I just made in the record I had to determine the cars that I had used as the basis for calculating the turn around time that were held in the Harsimus Cove Yard.

Now, that doesn't quite cover what you have asked there.

Q. No, so you did not make any specific study of the percentage of cars that are not held, that are delivered immediately upon arrival or as soon as possible?

A. No. I only determined those that were held and the time they were held to deduct it from the grand total.

Mr. Hoffman: No further question.

Mr. Loos: May I ask just one more question, Mr. Examiner?

Exam. Walsh: Mr. Loos: further cross examination.

[fol. 1823] Further cross-examination.

By Mr. Loos:

Q. Would you be willing that the shipper own refrigerator cars in which he ships fruits and vegetables?

A. That he should own it?

Q. Yes.

A. I don't think that is a question for me to answer. That is a policy question for the management.

Mr. Loos: That is all.

Exam. Walsh: Any further questions?

(No response)

Exam. Walsh: As I understood you to say, the tariff provides for holding those cars at Harsimus Cove if they arrived sort of late?

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The Witness: The tariff provides that any perishable shipments from west of the Mississippi River, and all citrus, will be held in Harsimus Cove Yard unless release orders have been received prior thereto for, or rather and southern perishable other than citrus will also be held if an order has been received to hold it, then from an operating practice, standpoint, we hold arrivals on Friday, and Saturday, and Sunday, up to a certain time, that are destined to Piers 27, 28, because naturally we couldn't move them over to the piers, so they go to the hold tracks.

Exam. Walsh: Do you know if tariffs make any provision for delivery of the traffic to the consignee?

The Witness: I don't understand your question, Mr. Examiner.

[fol. 1824] Exam. Walsh: Do you know if the tariffs make any provision for delivery of the traffic to the consignee? Do you know if tariffs make any provision for delivery to the consignee? Do you understand that?

The Witness: I think I do. Of course, I am not a traffic man and I believe I don't understand it in the sense you are asking it anyway. You mean for instance a carload shipment must be unloaded on a team track by receiver?

Exam. Walsh: Well, delivery made to the consignee, in some way. Do tariffs provide for that, or do you know?

Mr. Miller: I don't know that there is any specific language in the tariff saying we will deliver freight to consignees: Certainly, implication of the tariffs is that all freight is delivered to consignees.

Mr. Wells: Doesn't the particular tariff here involved say that the consignees will not be permitted to take delivery until after it is unloaded onto the Pier 27?

Mr. Miller: Certainly not in so many words.

Mr. Wells: Well, the position of the Pennsylvania Railroad, so far as I understand, has not changed since the former hearings when you stated that we would not be permitted to take delivery while in the freight car on the float, is the point I am getting at.

Mr. Miller: Our position has not changed from our position at the last hearing, that is correct.

[fol. 1825] Exam. Walsh: Proceed.

I thought you might know that answer.

The Witness: I am sorry, Mr. Examiner, I don't quite

grasp it. I don't remember any tariff saying in so many words just how deliveries shall be effected; as a general proposition.

Exam. Walsh: Any further questions?

(No response)

Exam. Walsh: Witness excused.

(Witness excused)

Exam. Walsh: Do you offer the exhibits?

Mr. Miller: I would like to offer Exhibit 151 in evidence, Mr. Examiner.

Exam. Walsh: Exhibit 151, Witness Clark, received in evidence.

(Respondents' Exhibit No. 151, Witness Clark, was received in evidence.)

Exam. Walsh: We will take about a five-minute recess.

(Short recess)

Exam. Walsh: Come to order.

Mr. Donadio: Mr. Examiner, the next witness, Mr. Talbott, Mr. Examiner, has already testified in this case on other occasions, and his testimony to be presented in this case is in the form of questions and answers in written form, and a copy of it has been distributed to all the parties of record, together with three exhibits and with your permission, may we have those exhibits identified as Exhibit [fol. 1826] 152, which apply to the exhibit marked "Pro No. 1." The first exhibit will be 152.

Exam. Walsh: It will be marked Exhibit 152, for identification.

(Respondents' Exhibit No. 152, Witness Talbott, was marked for identification)

Mr. Donadio: "Pro No. 2" will be 153, Mr. Examiner, and in the left-hand corner, "Pro No. 3" will be Exhibit No. 154.

(Respondents' Exhibits No. 153, and 154, Witness Talbott, were marked for identification.)

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Mr. Donadio: Now, Mr. Examiner, in the testimony, there are references to exhibits and on page 2, may we have inserted Exhibit 152 at the top of the page and the spaces to page 6 will also be with reference to 152, and on page 6 at the top of the page 6 insert Exhibit 153 and 153 will go into pages up to 9.

Exam. Walsh: To and including 9?

Mr. Donadio: There is nothing on 9. The blank space on 9 will be Exhibit 154, to the end.

May his testimony be copied in as though read?

Exam. Walsh: Yes.

Mr. LaRoe: That is agreeable.

E. M. TALBOTT was recalled, having previously been sworn, testified as follows:

Direct examination.

By Mr. Donadio:

Q. State your name and address for the record.

[fol. 1827] A. My name is E. M. Talbott. My address is Room 906, Baltimore and Ohio Building, Baltimore, Maryland.

Q. What position do you hold with the Baltimore and Ohio Railroad and what has been your experience?

A. I am employed as a special accountant, office of the Comptroller of the Baltimore and Ohio Railroad, Baltimore, Maryland.

During the past 30 years, I have filled various positions in the Accounting Department of that Company. During the past 15 years I have been engaged principally in the preparation of operating costs and accounting data, including field studies, especially in connection with rate cases before the Interstate Commerce Commission and the Public Utility Commissions of the various States in which the Baltimore and Ohio operates.

Q. Have you recently made a study and prepared some exhibits dealing with the costs of terminating fresh fruits or vegetables at the Baltimore and Ohio terminals at Philadelphia and New York?

A. I have made a study based on the operations for the month of December 1950 and prepared three exhibits, showing the terminal costs incurred incident to terminating fresh fruits or vegetables at Philadelphia and New York for presentation in this case.

This- exhibits are identified as Pro. Nos. 1, 2 and 3, as indicated in the lower-left-hand corner. My exhibit 152 shows costs of terminating a car of fresh fruits or vegetables on both the auction sales platform and the team tracks at the [fol. 1828] Perishable Products Terminal, located on Delaware Avenue, Philadelphia, Pa.

My Exhibit 153 shows the cost of terminating a car of fresh fruits or vegetables at 26th St., New York.

My exhibit 154 shows the expense incurred in connection with terminating a car of fresh fruits or vegetables at Pier 22-23, North River, New York.

Q. Will you describe exhibit Pro. No. 1 and identified as No. 152 dealing with the operations at Philadelphia?

A. My exhibit Pro. No. 1 and identified as Exhibit 152 consists of 7 pages. Page 1 shows the recapitulation of the charges which are detailed on pages 2 to 7 of the exhibit. As indicated in column (1) on page 1, the terminal costs incurred in connection with terminating a car of fresh fruits or vegetables at the auction sales platform amount to $75.94, whereas the terminal costs for terminating a car at the team tracks amount to $27.66, as shown in column (2).

Q. Will you continue to explain your exhibit?

A. On page 2 of my Exhibit 152 I have shown the expense pertaining *the* the agent's office, other than the platform unloading expense. At the Perishable Products Terminal, the Baltimore and Ohio maintains a separate agency to handle the fresh fruit and vegetable traffic. The amount shown on the first line for salary of agent and office force, office supplies and stationary, represents expense incurred [fol. 1829] during month of December 1950. The expense shown for heat is the average per month for the year 1950 and represents a portion of the total heating expense at the terminal assigned to the agent's office on floor space basis. The restaurant at the Perishable Products Terminal is operated to satisfy the demands of the fresh fruit and vege-

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table trade and the loss for the month of December, amounting to $610.21, is therefore included on page 2.

The last item, amounting to $53.37, represents the portion of taxes, depreciation, maintenance and interest on investment allocated to the office. The total expense on page 2 amounted to $5,023.96. A total of 518 cars of traffic were handled during the month, resulting in an average cost per car of $9.70. This cost applies equally to the auction sales and team track traffic and has been so listed in columns (1) and (2) on page 1.

Q. What does page 3 of this exhibit show?

A. Page 3 of my exhibit 152 shows the platform expense in connection with terminating the traffic on the auction sales platform. The unloading operation is handled by Baltimore and Ohio forces. The items of expense are listed in detail. As indicated, the costs applicable to traffic handled over the auction sales platform during December 1950 totaled $16,140.32. 371 cars were unloaded, resulting in an average cost of $43.50 per car. This amount has been shown in column (1) on page 1.

Q. What does page 4 of your Exhibit 152 show?

A. Page 4 of my Exhibit 152 details the expense which is [fol. 1830] common to all cars handled in the yard adjoining the Perishable Products Terminal. As indicated, this expense totals $2,074.60 which, when divided by the total number of cars handled in the yard, namely, 1,655, results in an average cost per car of $1.25. This average cost per car has been shown in columns (1) and (2) on page 1.

Q. What does page 5 of your Exhibit 152 show?

A. On page 5 of my Exhibit 152 I have detailed the expenses in connection with the yard engine operations at the Perishable Products Terminal. The cost of $ .97 per hour shown for Diesel locomotive repairs represents the actual maintenance cost as taken from the records. The cost per locomotive hour of $19.67 for transportation expense was developed by dividing the total cost of operating all yard locomotives at the terminal by the total yard locomotive hours involved.

Depreciation and return on investment were calculated to amount to $1.85 per locomotive hour at this terminal, based on the use of 13 Diesel yard locomotives.

The total amounts to $22.49, resulting in a cost of $ .375 per locomotive minute. Based on operations during the month of December, the average yard locomotive time for handling cars at the Perishable Products Terminal amounted to 20.1 minutes per car. This results in a cost of $7.54 per car. This cost applies equally to auction sales platform cars and team track cars and the amount has been [fol. 1831] shown in columns (1) and (2) on page 1.

Q. What does page 6 show?

A. Page 6 shows the cost of hauling rubbish from the team tracks, which amounted to $115.00 for the month of December 1950. A total of 115 cars were handled on the team tracks, resulting in an average cost of $1.00 per car. This amount has been included in column (2) on page 1.

Q. What does page 7 of your Exhibit 152 show?

A. On page 7 of my Exhibit 152, there is calculated the taxes, depreciation, maintenance and 6% interest on the depreciated investment on the facilities involved in the termination of this traffic. The data are shown in three columns. In column (1), there are shown the costs related directly to the traffic terminated on the auction sales platform, averaging $10.31 per car. In column (2) are shown the costs related directly to the team track cars, averaging $4.53 per car. In column (3) are shown the costs related to all cars using the yard, averaging $3.64 per car. These average costs have been shown in columns (1) and (2) on page 1 of the exhibit.

The investment costs for land and structures are the actual costs as charged to Acct. 701—Road and Equipment Property and reported to Bureau of Valuation of the Interstate Commerce Commission.

The road depreciation as shown in the depreciation accrued since January 1, 1943, the date of the depreciation [fol. 1832] accounting was inaugurated by the order of the Interstate Commerce Commission.

The maintenance expenses shown in column (1) are the average maintenance costs for the past five years—1946 to 1950, inclusive. The maintenance costs related to the facilities in column (3) are included on page 5.

The number of cars used as a divisor for each of the columns represents the average number of cars per month

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using the facilities for which costs are included in the respective columns.

Q. What does your exhibit marked Pro. No. 2 and identified as Exhibit 153 show?

A. My exhibit 153 which consists of four pages, shows the terminal costs incident to terminating fresh fruits or vegetables on the team tracks at 26th Street, New York, during December 1950.

Page 1 shows the summary of the costs which are detailed on pages 2 to 4, inclusive.

As indicated on page 1, the terminal cost incident to terminating a car of fresh fruits or vegetables on the team tracks at 26th Street, New York, during December 1950, amounted to $70.46.

The station clerical expense, shown on the first line as $1.29 per car is the average cost for all carload traffic moving in and out of the New York area. The agency work at New York for all the New York traffic is handled in the [fol. 1833] office of our terminal agent located on the second floor at Pier 22-23. This cost includes office force, light, heat and a pro-rated portion of the rent applying to the space used for the office.

Q. Will you continue to explain your exhibit?

A. On page 2 of my Exhibit 153 there are shown the costs incident to the maintenance and operation of 26th St. Yard for the month of December 1950. The expense is set up in two columns. Column (1) includes expense common to all cars using the yard. Column (2) includes only that expense applicable to fresh fruit or vegetable traffic.

Under the caption "Maintenance of Way and Structures" the costs included for the track accounts—202 to 220, inclusive, represent the average costs per month for the year 1950. The expense included for Account 227 represents the average per month for repairing all driveways in the yard, based on five years—1946 to 1950, inclusive. The records do not indicate the particular driveways which were repaired during this period.

The expense listed for Account 241 represents the average cost per month for the five year period—1946 to 1950, for repairing the float bridge. The charge to Account 266

covers depreciation for month of December 1950 on the float bridge and driveways.

Under "Transportation (Excluding yard switching)", there are shown the charges to Accounts Nos. 373 and 376, Station employees and expenses. The station expense [fol. 1834] which pertains to all the traffic handled in the yard is shown in column (1). The station expense which pertains wholly to the fresh fruit and vegetable traffic is shown in column (2).

Under "Yard Switching", there is shown the expense incurred during December 1950 in connection with operation of the yard locomotive. This expense relates to all the cars using the yard.

The total expense listed in column (1) was divided by 1308, the total number of loaded cars arriving at and departing from the yard during December 1950 to arrive at an average cost of $12.35 per car.

The total cost in column (2) which relates only to the fresh fruit or vegetable traffic, was divided by 205, the number of such cars which were unloaded on the team tracks during December 1950, to arrive at an average cost of $18.20 per car.

The total yard cost applying to a car of fresh fruit or vegetable traffic is $30.55 as indicated. This cost has been included on page 1.

Q. What does page 3 of Exhibit 153 show?

A. On page 3 of my Exhibit 153, there is calculated the interest at 6% on the depreciated investment in the facilities at 26th St. Yard and the taxes. The data are shown in two columns. The figures in column (1) are applicable to all the traffic using 26th St. Yard. The figures in column (2) re- [fol. 1835] late only to the cars handled on the team tracks. The number of cars used as divisor for each of the columns represents the average number of cars per month using the facilities during the year 1950. An average cost of $6.86 was determined for the total expense included in column (1) and an average cost of $12.58 in column (2), resulting in a total cost of $19.44 for a car of fresh fruits or vegetables. This cost has been listed on page 1 of the exhibit.

Q. What does page 4 of your Exhibit 153 show?

A. Page 4 of my Exhibit 153 shows the expenses involved

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in the marine operation in New York harbor. The expenses total $89,640.84, which when divided by the number of cars floated during December 1950 result in an average cost of $19.18 per car. This average cost per car has been shown on page 1.

The expenses as shown on page 4 for Account 323—Repairs—are based on the average costs for the five year period—1946 to 1950, inclusive.

Q. Describe your exhibit Pro. No. 3, identified as Exhibit 154 dealing with the operations at Pier 22-23, North River, New York, N. Y.

A. My Exhibit 154 consists of four pages. Page 1 shows recapitulation of the charges which are detailed on pages 2 to 4.

As indicated on page 1, the terminal costs incurred in connection with terminating a car of fresh fruits or vegetables on the station platform at Pier 22-23, North River, [fol. 1836] New York, amount to $119.86 per car.

The station clerical expenses shown on the first line as $1.29 per car is the average cost for all carload traffic moving in and out of the New York area. The agency work at New York for all the New York traffic is handled in the office of our terminal agent located on the second floor at Pier 22-23. The station clerical costs include office force, light, heat, and a pro-rated portion of the rent applying to the space used for the office.

Q. What does page 2 of your Exhibit 154 show?

A. Page 2 of my Exhibit 154 shows the station costs incident to unloading a car of fresh fruits or vegetables at Pier 22-23 during December 1950. The various items of expense are listed in detail. The total expense of $14,108.09 when divided by the number of cars unloaded during the month results in an average cost of $68.49 per car, which amount is shown on page 1.

The expense in connection with recoopering of bad order packages has been excluded from these costs.

Q. What does page 3 of your Exhibit 154 show?

A. Page 3 of my Exhibit 154 shows the miscellaneous pier station costs other than unloading costs. These costs relate to all the traffic handled on Pier 22-23. The expenses are

listed in detail and the total of $24,531.11, which when divided by 794, the total number of loaded cars handled in December 1950, results in an average cost of $30.90 per car. [fol. 1837] This amount is shown on page 1.

All the expenses listed on page 3 are the actual expenses incurred during month of December, 1950, except those under Accounts 227-241—Station and pier maintenance. This expense is based on the average per month for the five year period—1946 to 1950, inclusive.

Q. What does page 4 of your Exhibit 154 show?

A. Page 4 of my Exhibit 154 shows the expenses involved in the marine operation in New York harbor. The expenses total $89,640.84, which when divided by the number of cars floated during December, 1950 result in an average cost of $19.18 per car. This average cost per car has been shown on page 1.

The expenses for Account 323—Repairs, included on page 4, are based on the average cost for the five year period—1946 to 1950, inclusive.

Mr. Donadio: The witness is available for cross examination.

Cross-examination.

By Mr. LaRoe:

Q. Mr. Talbott, I have only one point. Your testimony is very clear, and I just wanted to ask you this one question.

Your figures come out pretty high, higher than some of the other railroads, nearly $120, page 1 of your Exhibit 154.

I think you would be frank to admit, would you not, that because of the small volume of traffic which the B. & O. [fol. 1838] handles,—of this particular traffic—the unloading costs, for example, are inflated by reason of that fact more than they would be if you handled a volume more akin to that of the Pennsylvania and the Erie?

A. Well, I would say the labor cost would be lower if we had a larger volume.

Q. And isn't that true also of some of the other costs, that the small volume which you handle, being only about one-tenth of what the Erie handles, for example, produces a higher unit cost than it otherwise would?

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A. I don't think that applies equally to the other elements of costs, because the facilities are handling about all the traffic they can handle over them and we have only charged against this particular traffic a portion of the cost of the facilities, so the only element of cost which would be lower if you had a greater volume, that is, I mean lower per ton, would be the unloading cost.

Q. Do you handle on your B. & O. Pier other fruit—other food products than fruits and vegetables?

For example, do you handle canned goods?

A. Oh yes, we handle most any commodity.

Q. Do you handle canned citrus, for example?

A. We handle a general variety of canned goods of most any commodity.

Q. And when you unload canned citrus on your pier you [fol. 1839] don't charge for it do you?

A. We make charges according to tariff and I don't think there is any tariff charge on citrus fruit.

Q. Are you aware of the increasing competition between canned citrus fruit and citrus fruit?

A. Well, I am not so well acquainted with that angle of it.

Q. Don't you know of it from your own consumption?

A. I know we consume more of the frozen and canned than of the fresh.

Q. Isn't that tendency increasing in your family and other families?

A. I don't know. I assume that it is.

Mr. Donadio: Mr. LaRoe, before you go any further I just want to have the record clear on your questions about unloading free other commodities at these pier stations. You are referring to New York, are you not?

Mr. LaRoe: Yes.

I just wanted to bring out very clearly for the record that canned citrus fruits is unloaded by the Baltimore and Ohio Railroad at its piers without any charge whatsoever, whereas a charge is imposed, if it doesn't happen to be in the canned form, and the witness, as I understand him, agrees with that and he also agrees as to the increasing competition between them. That is all.

Exam. Walsh: Any further questions on cross examination?

[fol. 1840] Mr. Wells?

Cross-examination.

By Mr. Wells:

Q. Mr. Talbott, what was the total number of cars handled on the pier station on the B. & O., as shown by your exhibit No. 152?

A. You mean a total of all cars or just perishable traffic?

A. Well let's take perishable traffic at the moment.

Mr. Donadio: What exhibit did you say, Mr. Wells?

Mr. Wells: Excuse me, 152 is Philadelphia.

By Mr. Wells:

Q. What is the total at Philadelphia?

A. Philadelphia, at our perishable products terminal we unload only perishable traffic.

Q. What is the total perishable traffic then? You are using the month of December, are you?

A. Yes.

Q. Well, on page 4 you have 1655 cars handled in the yard and then can you add the average number of cars handled a month at page 7? Will that correspond, columns 1, 2 and 3?

A. The figures——

Q. Does that mean there were 2160 cars handled at the Philadelphia perishable terminal in December, 1950?

A. No.

The figures in the first two columns are included in the third column, the total, average number of cars per month.

Q. You mean the 393 and the 287 are a part of the 1480; [fol. 1841] is that correct?

A. That is correct, yes.

Q. What happened to the other 175 cars then as between the yard operation and the perishable terminals?

A. I will have to dig back into my working papers to explain that. I have detail of all that in my papers.

Q. I thought maybe you could answer quickly without going into that.

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Is the answer one of them is an average that you got from somewhere and the other is the actual figure?

A. No. They are all actual figures. These are all actual figures.

Q. Well, on page 7 you say "Average number of cars handled per month." What do you mean by that?

A. Well, average per month, this was based on a year, and it was the average per month for a year.

Q. In other words, you took the year 1950, the number of cars, for example, for column 1, would be 12 times 393?

A. That is correct.

Q. And what were the actual number of cars in that category for the month of December, 1950? Was it 371 from page 3?

A. 371.

Q. As shown on page 3, is that right?

A. That is correct.

Q. So that your average for the year then, or per month, [fol. 1842] would have been some 22 difference?

A. That is right. In developing my cost for return investment and depreciation, I used the average cars per year but on my direct operating expenses for December I used the actual for the month.

Q. In what particulars did you use actual expenses for the month of December?

A. I used them in practically all particulars; all the expenses in this study are actual for the month of December, except—well, all of them, maintenance costs are based on the average for several years.

The operating costs are actual for the month.

Q. What about page 4? Is that actual? Yard operation, track maintenance, transportation?

A. Maintenance cost is the average for the year.

Q. You mean you took the total for the year and divided by 12 and said that is it?

A. Yes.

Q. Regardless of engine hours, or track mileage or anything else, is that right.

A. Well, that is the actual cost in that particular yard. We maintained records showing the cost of maintaining those particular tracks.

Q. So that what you did was to take the year's cost and divide it by 12 regardless of the use then in the month of [fol. 1843] December, is that right?

A. Well, that may be so, but maintenance cost don't relate to a month. Maintenance cost don't relate to a month. You may put in a lot of rail in January and no more the balance of the year.

Q. That is another reason why it is more accurate from the average standpoint to use more than a year's time in computing that, isn't it?

A. Well, not for your operations, because your operation relates to the month's business, closer than maintenance or depreciation.

Q. Where did you get the 97 cents as the per hour cost of maintenance of Diesel locomotive repairs on page 5?

A. We have a record on the Baltimore and Ohio showing what it costs us to maintain that particular type of Diesel locomotive, and the hours——

Q. Systemwide?

A. Systemwide but that particular type of locomotive. I don't think they are used all over the system. They may be used only in two or three yards on the system.

Q. At any rate it is a systemwide average for that particular class of locomotive, is that correct?

A. Yes.

Q. For what period of time?

A. That was for the year, the last year.

Q. 1950?

[fol. 1844] A. Yes.

Q. That is a pretty high average compared to the 70.07 for Diesel, per hour, at Harsimus Yard, and 80.7 for the New York Central and 83.4 for all engines at Harsimus Cove, according to the exhibits in this proceeding. Do you have any explanation or knowledge as to your, why your average on that amount should be so much higher than anybody else's?

A. I doubt very much if there is anything unusual about that. Most of these railroads, the Diesels are new, and as they get a little older they are going to cost more to repair them, so if the cost varies that much it wouldn't mean anything to me as a railroad man.

Q. In other words, you don't think that the computation

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with respect to maintenance is very accurate and reliable?

A. I didn't say that. I said the variation. You wanted to know if the variation meant anything. You quoted 80 cents in one place and I think mine were 97 cents.

Q. Referred to a computation of 70.07 per hour as the average cost of Diesel engines at Harsimus Cove Yard.

A. Do you know how old those locomotives are?

Q. No, sir. Do you know the age you were computing?

A. They are several years old.

Q. How old?

A. At least five years old.

Q. What was the difference between the average per [fol. 1845] hour repair cost in 1950, as against 1948, for those particular locomotives?

A. I don't think I have those details with me but I have them in Baltimore. I don't have them with me, but a new Diesel locomotive is like a new automobile. It doesn't cost as much the first year and the costs are liable to go up after it is two or three years old.

Q. Haven't you had some experience with some new lemons that did cost something the first year?

A. No, I haven't.

Q. Well, at any rate, in order to properly evaluate the unit costs that you have, considerable information would be needed to determine whether particular amounts were representative or not, is that right?

A. No.

Mr. Donadio: Do you mean to make comparison with someone else? He has enough information to justify his own figures but he has not got the information to make comparison with the New York Central, the Pennsylvania, or anybody else.

Mr. Wells: Or as to whether his own operation is efficient and economical.

Mr. Donadio: Well, I think there is no question about that. I will testify to that.

Mr. Wells: I think that is all.

Exam. Walsh: Any further questions of this witness?

Mr. Loos: May I ask, Mr. Talbott——

[fol. 1846] Cross-examination.

By Mr. Loos:

Q. In addition to the point shown in your exhibit of 26th Street, New York, and Piers 22 and 23, does the Baltimore and Ohio deliver freight at any other points in the New York Harbor area?

A. You mean this kind of traffic or any freight?

Q. Any kind of freight.

A. We have, I think Pier 39, or 39th Street, up in that section. I think that is the only other one, 39th Street.

Q. Pier 39?

A. I think it is Pier 39.

Q. It is a pier station?

A. That is right.

Q. Is that the only one?

A. That is the only one I recall.

Q. Is that a station at which package freight is delivered?

A. Yes.

Q. Are the cars floated over to that station?

A. That is correct.

Q. And are the cars unloaded?

A. That is correct.

Q. By the railroad?

A. That is right.

Q. Is any charge made for that unloading?

A. Only what the tariff provides. I am not a traffic man. [fol. 1847] Q. You don't know of any tariff provision for that?

A. I don't know of any, no.

Q. Is that unloading of that freight, is that the kind of freight to which you testified in answer to Mr. LaRoe's questions as to the kind of freight that was unloaded, canned goods, and other package freight?

A. If that's the kind that is given to us to transport that would be unloaded there, whatever is given to us to transport.

Exam. Walsh: Any further questions?

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Cross examination.

By Mr. Kaplan:

Q. Mr. Talbott, can you tell us what percentage of the unloads at Piers 22 and 23 are fruit and vegetables, and what percentage represents other types of freight?

Mr. Donadio: Over any particular period?

Mr. Kaplan: During the period of the survey.

The Witness: There was a total cars unloaded at Pier 22 and 23 of 794 cars.

By Mr. Kaplan:

Q. During what month?

A. December, 1950.

Q. And out of the 794 cars how many were fruit and vegetables?

A. 206.

Q. Does the same staff of employees unload fruit and vegetables as unloads the other?

A. No, entirely different crew. We unload—the day forces are carried on our own pay-roll, but the fruit operation is handled by contractor, entirely separate force.

[fol. 1848] Mr. Kaplan: That is all.

Cross examination.

By Mr. LaRoe:

Q. Your figures are what you pay the contractor?

A. Absolutely.

Q. Do you have his costs?

A. I don't know. We only have what he charges us plus his percentages, and so forth. These are his actual costs. He bills us the actual labor cost and adds on a 15 per cent overhead which I have shown on page 2 of my exhibit.

Q. What you have got in your exhibit as your cost is not his cost, but what he bills you?

A. What he bills us, but for that particular month we had one of our inspectors of accounts from the New York office work with the contractor and check his operation completely, and we pretty well know these are actually the cost figures.

Q. Now, wait a minute.

Mr. Donadio: It is a cost plus proposition.

By Mr. LaRoe:

Q. As a matter of fact, it is cost plus 15 per cent, isn't it?

The Witness: It is actual cost plus 15 per cent.
Mr. LaRoe: That is what I thought. That is all.
Exam. Walsh: Any further questions?

(No response)

Mr. Donadio: That is all.
[fol. 1849] We offer exhibits——
Mr. Fitzgerald: Just a minute, Mr. Donadio. I would like to ask a few questions.

Exam. Walsh: Mr. Fitzgerald.

Cross examination.

By Mr. Fitzgerald:

Q. Mr. Talbott, I am not quite clear on a couple pages of your exhibit 152 as to how to account for the difference in number of cars. You have said that 371 cars represented the number, actual number of cars unloaded in December at the auction sales platform; is that correct?

A. That is correct.

Q. Now, what does the figure 518, on page 2 of that exhibit, refer to?

A. That includes platform cars plus the team track cars.

Q. The team track cars are shown on page 6 of that exhibit, are they not?

A. Yes.

Q. 115 cars?

A. That is right, yes.

Q. That doesn't jibe, does it?

A. Well there is a reason for it. I can tell you if I go back in my papers. I can tell you what it is. The other cars would be the private sales cars included in that total. The 518 includes the team track cars and the private sales cars and also the platform cars.

[fol. 1850] Q. Is there any private sale at the Philadelphia Perishable Products Terminal?

A. Well, there is what you call—yes—there is a private

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sale platform there, the property leased from the B. & O. Railroad Company for those receivers, American Stores, I believe, Food Fair, or somebody.

Q. Isn't that the team track?

A. No.

Mr. Donadio: That is adjoining.

The Witness: As a divisor on page 2 I have used total number of cars of fruit received at the terminal for all purposes, because the agent handles those private sale cars as well as the team track cars and as well as the platform cars.

By Mr. Fitzgerald:

Q. I am not questioning your figures. I wanted to clarify the exhibit.

A. Does that explain it?

Q. Then I am to understand that there are perhaps 32 cars not accounted for as between auction and team track in your total of 518, and that that represents cars delivered to platform for private concerns?

Chain stores, possibly?

A. The difference are the private sales.

Q. Now, this exhibit, and I refer particularly to page 2, contains a loss due to operating a restaurant, and you make an average cost per car, which includes that figure.

[fol. 1851] A. That is right.

Q. That has no connection, does it, Mr. Talbott, with the unloading of fruits and vegetables, the operation of a restaurant by the B. & O. Railroad?

A. It is in connection with the operation of the terminal because it is there simply to accommodate that particular traffic.

Q. You think they wouldn't bring the refrigerator cars to the B. & O. Terminal if you didn't have a restaurant?

A. Well, they wanted it and we are operating it.

Q. Now, on the last page of your exhibit, what is the rate of depreciation you have used there, Mr. Talbott, in the auction sales building?

A. In the building?

That is the rate set up and approved by the Commission. I don't know exactly here what rate it is. It is a rate approved by the I. C. C. It is the rate we charge off every year, every month, to our account.

Q. I think the Pennsylvania used one and a half per cent. Would that be the same?

A. Well it is about that. For a large building it would be about one and a half per cent. I wouldn't want to say exactly. I could let you know.

Q. I don't think that would be necessary.

As respects the item on page 3 of your Exhibit 152—and all of my questions are directed toward Exhibit No. 152—the second item is platform labor, $9,379.18.

[fol. 1852] At my request you recently arranged to permit a representative of my client's, Mr. Donald T. Ward, to review with you your basic records supporting that item; is that not correct?

A. That is correct.

Q. And that figure is arrived at, I believe, by adding to your total incentive payments, so-called, of December, of $7,100.00, a certain small amount of additional labor for unloading cars on an hourly basis of only $4.20, to which you added 4 per cent overhead for administrative labor, payroll taxes, and vacation allowance, and in that way arrived at your total of $9,300; is that correct?

A. That is correct.

Q. And Mr. Ward went over those complete figures with you and secured a complete breakdown of the determination of that $7100?

A. I showed them to him. I don't know what he determined or what he took with them. I showed them to him.

Mr. Fitzgerald: That is all.

Exam. Walsh: Any further questions of the witness?

Mr. Donadio: I offer, Mr. Examiner, exhibit 152, 153, and 154, and ask they be so marked and received as a part of the record in this proceedings.

Exam. Walsh: Exhibit 152, 153, and 154, Witness Talbott, are received in evidence.

(Respondents' Exhibits 152, 153, & 154, Witness Talbott, were received in evidence.)

[fol. 1853] Exam. Walsh: Do you know of any other stations, other than New York and Philadelphia, at which the Baltimore & Ohio makes a charge for unloading freight, of any character, similar to the charge made here?

The Witness: As I understand it we make a charge at all

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other points for all other carload freight.

Exam. Walsh: For instance where, a separate charge?

The Witness: Baltimore, Chicago——

Exam. Walsh: You mean you make a separate charge for unloading freight at Baltimore?

The Witness: Yes, carload freight, yes.

Mr. Miller: Is that true at Philadelphia?

The Witness: At Philadelphia, yes.

Mr. Fitzgerald: Mr. Examiner, may I ask——

Exam. Walsh: Wait until I finish this. I will give you a chance again.

Now, what character of freight?

The Witness: Any character of carload freight, at any other place.

Exam. Walsh: At what physical point or location do you make the delivery—that is, when you perform the unloading at Baltimore, Philadelphia, or wherever else, on other freight?

The Witness: Well at Baltimore there is a perishable terminal where the perishable traffic is unloaded, and if we unload it we charge for it.

[fol. 1854] Exam. Walsh: And is the perishable shed your property?

The Witness: Our property, yes.

Exam. Walsh: Is it leased to anybody?

The Witness: It is not.

Mr. LaRoe: Do you ever perform the unloading service yourself?

The Witness: I am not so sure about the perishable traffic at Baltimore.

Exam. Walsh: I want you to be sure. I am looking for specific and correct information.

The Witness: We unload the forwarder traffic there and charge for it definitely at our freight houses.

Mr. LaRoe: Forwarder traffic is in a class by itself. As to ordinary traffic, you knew perfectly well that at that house in Baltimore you don't unload that freight. That is unloaded by the consignees.

The Witness: I think perishable traffic is unloaded by the consignee, but there is a tariff charge that would apply if we did unload it.

Mr. LaRoe: In theory, yes.

Exam. Walsh: Where would you place it when you unloaded it? That is what I want to know.

The Witness: There is a perishable products terminal at Baltimore.

Exam. Walsh: Would that be delivering it to the consignee's property, either wagon or warehouse or piece of [fol. 1855] land?

The Witness: He backs up and takes it away.

Exam. Walsh: You unload it on his wagon?

The Witness: No, not on his wagon.

Exam. Walsh: When you charge him—I am not talking now about those charges at Philadelphia or New York; I am talking about the charges for unloading other freight—when the Baltimore and Ohio performs the unloading, do they place it on the station platform, or do they make delivery of it to the property of the consignee, either a warehouse, a team track, a truck or wagon?

The Witness: My only acquaintance has been with these forwarder traffic. We unload the carload traffic at Chicago and Cleveland and different places, but I would rather not answer you specifically. I would rather find out tonight if you want.

Exam. Walsh: Possibly that could be a question for counsel.

Mr. Donadio: I think, if the Examiner please, that the tariffs will pretty well show just what the situation is with respect to the unloading at other places.

There is an unloading charge at Philadelphia that has been in effect for several months which covers all traffic at Philadelphia.

Exam. Walsh: Is it similar to the unloading charge for fruits and vegetables?

Mr. Donadio: Different amounts, but it is of the same nature. It covers all unloading of freight from a car to a [fol. 1856] platform, station platform; and as I understand it it contemplates nothing more than the unloading of the physical unloading of the freight from the car to the platform, the station platform.

Exam. Walsh: Does that apply in instances where the consignee can unload the freight, is in a position to unload the freight?

Mr. Donadio: Under the tariff at Philadelphia as I un-

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derstand it it doesn't contemplate that the consignee will unload the freight.

Mr. LaRoe: That is confusing. May I be permitted to ask counsel this question?

Is there any other place that you know of where the railroad imposes a charge on the consignee when it unloads the car, without at the same time giving the consignee the option to unload, if he wishes to, and giving him access to the freight?

Mr. Donadio: At Philadelphia, the tariff that is now in effect at Philadelphia gives the consignee no opportunity to unload or do his own unloading.

Mr. LaRoe: I am asking you "any other place except those involved in this issue here," Baltimore, Chicago, Cleveland,——

Mr. Donadio: This Philadelphia situation isn't involved specifically in this issue because it covers other freight. What we are concerned with here as I understand it are fruits and vegetables and you asked if there were other places. Philadelphia is one of them, a tariff which recently [fol. 1857] went in effect provides for a charge for unloading dry freight, if you want to call it that, or domestic freight or any kind of freight, package, carload freight.

Mr. LaRoe: Would that give the—without giving the consignee the privilege of unloading?

Mr. Donadio: As a matter of fact, that privilege is not given.

Mr. LaRoe: Is there any other place in the United States where that is true?

Mr. Miller: Pittsburgh.

Mr. Wells: Well now, I think we are getting this all confused. I would like to have the record show that tariff reference and specific items if we are going into something that has developed recently about new tariff provisions and comparable provisions of that sort.

Personally, I have never heard of a place anywhere, except Philadelphia and New York, on perishables, where any unloading charge was attempted to be assessed if the consignee did not and was not able to get to the car.

Mr. Loos: Mr. Examiner, I think perhaps one question might clear this up.

Isn't it true, Mr. Donadio, that at Philadelphia and at all

other points other than New York, a shipper can take team track delivery and you have facilities to give him team track delivery if he wants it?

[fol. 1858] Mr. Miller: We do in New York.

Mr. Donadio: B. and O. has 26th Street team track there and any shipper can take delivery.

Mr. Loos: As long as it is well understood and admitted on the record that the present track facilities are utterly inadequate.

Mr. Miller: No, sir.

Mr. Donadio: I won't admit that.

Mr. Loos: We don't need to argue that all over again. It is certainly in the record.

Mr. Miller: Certainly it is not.

Mr. Smith: What is in the record is correct, Mr. Loos.

Mr. Hoffman: Mr. Examiner, there was clear testimony on this in previous proceedings.

Exam. Walsh: This may be a good time to get this cleared up. After all, there must be a proposed report or some kind of a report. I have before me here the argument in this proceeding, on July 24, 1950, as to the latest proposed report and Mr. Smith was conducting the argument and he criticized a sentence in the Examiner's findings which reads, and I am quoting, "Heretofore, it was generally assumed that compensation for those services"—that is, the unloading services—"was included in the line haul rate, or in special divisions allowed delivering carriers."

Now, I think you criticized the word "assumed". I should like to know for the record where the charge for [fol. 1859] unloading was included prior to the time that these present charges became effective; that was, November 1st, 1948.

I should like to know where those charges were included in the charges for unloading so that when I may be preparing this report again I will get away from assumptions.

Mr. Smith: You can look at that either one or two ways, Mr. Examiner.

It is perfectly true that until these unloading charges became effective the only money we got paid for the through service from California, we will say, to the piers at New York was the line haul rate. You can look at it that way: Or you can look at it from the stand point that we per-

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formed the unloading free of charge over a long period of time.

Mr. LaRoe: If the Examiner then had said instead of using the word "assumption" that the unloading service has in fact always be- included in the line haul rate prior to the effective date of these new charges he would have been right.

Mr. Donadio: No, he wouldn't have.

Mr. Miller: No. If he had said there was no separate charge made for unloading prior to these charges he would have been correct.

Mr. LaRoe: All right. We will get it that way then, no separate charge through all the years for half a century or more was made in addition to the line haul rate for the [fol. 1860] performance of this service.

If the Examiner had so stated and had avoided the word "assumption" or "assumed" he would have been correct, would he not?

Mr. Miller: That is correct.

Mr. Smith: I don't know why we should quibble about language. The fact is clear that until these loading charges went into effect we received nothing for the unloading service except the general income we got, which were the line haul charges.

That is perfectly clear. It is obvious.

Exam. Walsh: Is there a contention by respondents that the charge for making delivery was not included in the through rate, which embraced line haul and which should also include or embrace delivery?

By implication the carrier must tender the shipment for delivery to the consignee.

Mr. Miller: That is right.

Mr. LaRoe: Mr. Examiner, may I say on that point that we do not like the emphasis that is throughout this case on the word "unloaded." What we claim we are entitled to is simply delivery, customary delivery, on these piers, and we don't get it without paying extra for it.

Our legal point is that there must be reasonable simple delivery, and the only kind of simple delivery they can give on these piers is pier delivery because they don't give us access to the car until it is placed on the pier, so we claim [fol. 1861] we are being charged here for simple delivery

of freight at these stations, and that these stations are the customary stations.

Mr. Miller: By the same sign, Mr. Examiner, it is equally true we have not included in our costs in justification of the unloading any of the costs which are incurred in the course of making delivery to consignees. There are costs involved in making that delivery, but none of those costs have been included in our cost studies in justification of these charges.

Exam. Walsh: Now, for instance, you don't have to go into detail, into the specific figures.

Mr. Miller: Well, in general, the delivery function on the piers consists of indentifying the property and transferring possession to the receiver, just as in the case of any other property.

Exam. Walsh: Where does that identification take place?

Mr. Miller: On the piers.

Exam. Walsh: Where do you transfer the property to the consignee?

Mr. Miller: On the piers.

Exam. Walsh: At what point?

Mr. Miller: Wherever the freight is located on the piers.

Exam. Walsh: After the freight is placed at a certain location on the piers?

Mr. Miller: Yes.

[fol. 1862] Exam. Walsh: That is where you make delivery?

Mr. Miller: Yes.

Mr. LaRoe: There isn't any transfer to the consignee except that he goes there and picks it up?

Exam. Walsh: The unloading that is performed at the pier, and I am not including Philadelphia, that will come later—but isn't the unloading that is performed at the piers a result of carrier disability to make delivery?

Mr. Miller: No.

Exam. Walsh: Of course, you have a right to answer your way, of course.

Mr. Miller: It is an additional service performed in the case, in the course of this particular kind of delivery. That is true everywhere.

Exam. Walsh: Why don't you make delivery to the consignee before you perform the unloading?

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Mr. Miller: Why don't we perform the unloading afterward?

Exam. Walsh: No, to the consignee before you perform unloading?

Mr. Miller: Because it would make it an awkward situation.

Exam. Walsh: What?

Mr. Miller: It would result in an awkward situation.

Mr. LaRoe: Awkward because we are denied access to the car float.

Mr. Miller: By no means.

[fol. 1863] Exam. Walsh: And that awkwardness as to the situation is a result of the physical——

Mr. Miller: The kind of delivery.

Exam. Walsh: Yes. And it is a carrier disability.

Mr. Miller: No.

Mr. Donadio: There is another element if the Examiner please, inherent in this situation, and that is the labor situation up here. The consignees couldn't come on these railroad piers and start with their gangs of men and unload these cars. If they did there would be a lot of broken heads within a very short time.

Mr. Kaplan: That is not so at all. I object to that. If that is in the record, I want to say labor relations have been very peaceful in New York.

Mr. Donadio: The point I am making is that no consignee could bring a group of men on the piers, on the floats, and have them unload the cars.

Mr. Kaplan: The railroads wouldn't let us.

Mr. Donadio: You couldn't do it even if you were let.

You would have to hire the same people the railroads hire. I think that is important in answer to the question the Examiner put.

Exam. Walsh: The unloading is performed by unionized gangs, groups.

Mr. Donadio: Particular groups, Stevedores.

[fol. 1864] Exam. Walsh: Were those separate unloading charges that you put on, that became effective November 1, 1948, were they established because of the increases, the very large increases that were then given to those labor unions, and those labor unions had been performing

that service for you for many years, hadn't they, prior to that time?

Mr. Donadio: That is so.

Mr. Smith: I think that had a bearing on it. I think at the first hearing one of our witnesses explained rather fully the background and pointed out that at one time these costs weren't so heavy, and no extra charge was made for them until finally the point was made, was reached where the charge became so burdensome we felt we did have to make a charge.

Exam. Walsh: It was when those increases became apparent to you that you proposed to establish the separate unloading charges that are now in effect?

Mr. Hoffman: In the meantime we were subjected to successive increases in the line haul rates under numerous ex parte proceedings which should have taken care of them.

Mr. LaRoe: May I ask Mr. Smith a question at that point, which I don't think is an unfair question?

At that point, why would it not have been fairer to impose upon the shipping public only the increase in the labor cost over and above what you had borne for a long period of time, instead of going back and imposing on the shipping [fol. 1865] public also the cost that you had borne for all these years?

Mr. Smith: I think, frankly, we felt we were entitled to recoup our costs a hundred per cent. It oft-imes happens that a burden is very light and you don't pay any attention to it, then the burden becomes heavy and you look into the matter and you decide you should get a new dollar back for the whole old dollar. I think that is the explanation of that.

Exam. Walsh: How do you perform unloading at the points other than—I am talking about New York, at points other than the piers?

Is that performed by your non operating employees, like freight handlers, checkers and truckers?

Mr. Donadio: There is no unloading at team tracks.

Exam. Walsh: I mean at other stations.

Mr. Donadio: Pier stations?

Exam. Walsh: Yes.

Mr. Miller: Well take the situation in Philadelphia as an

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example. The unloading of this freight is performed by station labor at this perishable products terminal.

At other stations, where we performed unloading of other freight, it is handled by the same class of employees who pick up the freight out of the car and take it out and put it at a place of rest on the platform in substantially the same fashion as is done with this freight.

Exam. Walsh: So that if you had not a contract with the [fol. 1866] Seaboard Unloading, Seaboard Refrigeration Unloading Crews, or the Penn Stevedoring Organization at New York, the unloading would be performed by your own non operating employees, and by those I mean freight house warehouse men.

Mr. Miller: That is right.

Exam. Walsh: Freight house employees, freight handlers?

Mr. Miller: Freight handlers, truckers.

Exam. Walsh: And so forth?

Mr. Miller: Yes.

Exam. Walsh: Now, I should like to know for the record how the increases in the rate of pay to the unionized non railroad employees who now perform the unloading, how that rate of increase compared with the rate of increase that you gave your non operating employees who would have performed that service——

Mr. Smith: I think they were about the same, Mr. Examiner,——

Mr. Miller: The increases were handled somewhat differently in that these non operating increases for our own employees were a part of a National agreement, whereas the increases for employees of contractors at our pier stations were handled between the contractor and his own employees. I think I can say that in one hundred per cent of the cases those contractors' employees got the same increases as were applied nationally for non operating railroad employees.

Exam. Walsh: Now then, were the railroad rates increased, railroad freight charges increased, giving con- [fol. 1867] sideration to the increases given to non operating employees as well as to the other railroad labor?

Mr. Miller: Oh yes.

Exam. Walsh: So that your present rates reflect the increases in the cost of operation?

Mr. Miller: Yes.

Exam. Walsh: And you have admitted that the increase that has been given in the pay to the unloading gangs, that is, the non railroad unloading gangs, that that increase has been no greater than the increase that was given to your non operating employees?

Mr. Miller: That is right.

But, Mr. Examiner, you seem to have neglected the fundamental in this proposition, that we were entitled to assess charges for unloading freight at New York and Philadelphia for many years, as soon as the practice of assessing charges for unloading became general throughout the Eastern District.

Now, as to our right to assess such charges, representing the cost of performing the service, plus a small increment, that right was established many years ago by virtue of the uniform practice throughout Eastern District.

Now, if for some years we forewent assessing those charges and postponed the date when such charges should be begun at New York and Philadelphia to a date later than those charges became effective at other points, we certainly [fol. 1868] are still entitled to assess charges here the same way as we have done for many years at all other points.

Exam. Walsh: At what other point or points on the Pennsylvania system, or on respondents' lines, other than New York and Philadelphia where you have performed unloading and made charges for it have you not given the consignee, first, an opportunity of performing its own unloading?

Mr. Miller: Oh, on that point——

Mr. Smith: The consignee has the opportunity here of ordering team track delivery.

Mr. Miller: The consignee never gets delivery of the freight until after it is unloaded. On no occasion, no matter where the unloading is performed, the consignee never gets delivery of the freight, never gets possession of the freight until after it is unloaded and placed on the platform. That is true, everywhere.

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Mr. LaRoe: There is no other place I know of in the United States where the railroads do not include in the line haul rate a simple reasonable delivery to the consignee and here they don't make that reasonable simple delivery. They put it on a car float, to which they deny us access.

Mr. Miller: We equally deny them access when they ask for unloading at any other platform.

Mr. Thornton: Nobody is asking for it here.

Mr. Hoffman: Mr. Examiner, on the occasion of the last [fol. 1869] hearing, my recollection is that we developed testimony, and I think I brought it out on cross examination, that with respect to citrus other than Philadelphia and New York, we are permitted access to the car and the matter of unloading is optional, as set forth in the tariff, and even more important in all those other cities, the railroad can give us access because they have adequate team track facilities; and therein lies the difference between New York and the other cities, is the inadequacy of the carrier here to give us team track facilities.

In so far as the pier is concerned, it is admitted in this record that we are not given access to the car. Instead of unloading the car, being permitted to unload the car, we are permitted to unload the pier platform; and to access an unloading charge here is to access on us a double unloading charge.

We are requested to pay the unloading charge from the car to the platform, and then we have to assume and absorb the unloading charge, so to speak, from the pier platform to our own trucks.

Mr. LaRoe: That is right.

Exam. Walsh: I suppose this is a good place to adjourn.

Mr. Loos: Before we get too far away from it, may I refer to the remark Mr. Miller made a moment ago when he said that all these years the railroads have had the right to charge for this unloading. Now that I deny. At New York they didn't have that right and they don't have it today and that is the whole point at issue in this case, [fol. 1870] and you can't just assume the point at issue in this case.

Mr. Miller: Mr. Examiner, we do have one other witness for respondents.

Exam. Walsh: Tonight?

Mr. Miller: He will take just a very few minutes.

Mr. Fitzgerald: Mr. Examiner, before Mr. Talbott is excused, I inadvertently interrupted the Examiner previously. There has been some difficulty hearing back here but there are one or two questions I wished to ask before he is excused.

Exam. Walsh: All right.

By Mr. Fitzgerald:

Q. Cars unloaded at the auction sales platform at Philadelphia, shown in your Exhibit 152, was 371, is that correct?

A. That is correct.

Q. And under your tariff, the consignee is not permitted to unload those cars so they had to be unloaded by the carrier, that is also correct, is it not?

A. If they wanted to be unloaded on the platform. Of course, they could take delivery in the team track for them.

Q. And 115 cars were delivered at team track, but as to the cars in excess of those delivered at auction platform and at team track, which you stated were also arrivals at the perishable products terminal, who unloaded those cars?

A. The consignee.

[fol. 1871] Mr. Fitzgerald: That is all.

Cross Examination.

By Mr. Montgomery:

Q. Mr. Talbott, according to your exhibit 152 it would appear that your 371 cars unloaded by pier delivery, and 115 team track—isn't it a fact, as was brought out in the last hearing, that team track facilities in Philadelphia are not ample or sufficient for team track delivery of all the cars coming into the terminal?

A. In Philadelphia?

Q. Yes.

A. I think they are.

Q. You think they are?

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A. Yes. I would think so.

Q. But it is a fact, however, that the majority of cars are delivered at pier delivery by the railroad under the charge?

A. At the platform?

Q. That is right.

A. Where the consignee desires to take delivery.

Q. Where the consignee is not permitted access for the purpose of unloading the cars, but they are unloaded by the railroad and the consignee is charged for it; isn't that correct?

A. They are unloaded on the platform where the consignee desires to take unloading. He could unload them on the team track.

Q. Now, just one other question here. In your exhibit [fol. 1872] 152, the figures which you have submitted here include many items including the costs in the line haul, as well as terminal charges and unloading charges, do they not?

A. My cost studies were based on what I thought the Commission wanted. I thought they wanted a complete cost of the unloading of team track cars, compared to platform cars?

Q. And that includes—you have not segregated to show what is allocated only to the unloading charge, but you have just included every other item, including your costs of maintenance, repair, your railroad, tracks, locomotive and everything?

A. This is complete terminal cost of unloading each type of car.

Q. In other words, this is what you thought the Commission wanted but you have not segregated it so as to show what the actual costs are of unloading?

A. That is correct. The unloading costs are included in here but they are not set out separately.

Mr. Wells: Mr. Examiner, I wonder if I might ask one additional question?

Mr. Donadio: I would like to get this cross examination over with now.

Mr. Wells: This is a matter that has arisen by reason of the discussion that has been here on the record and some questions that were asked.

Mr. Donadio: It is not due to any redirect. That is the only purpose of recross, to take care of redirect.

[fol. 1873] Exam. Walsh: Proceed, Mr. Wells.

Cross examination.

By Mr. Wells:

Q. I would like to ask, the historical background of the lack of an unloading charge on citrus fruit, delivered at Philadelphia, are you familar with the fact that the method of handling at Philadelphia, say, in 1926, at the time of the docket 16939, was exactly the same as at New York City?

A. No. I am not acquainted with that. That is beyond my time.

Mr. Wells: That is all.

Exam. Walsh: Witness is excused.

(Witness excused.)

Mr. Wells: Mr. Examiner, in connection with the discussion I should like to read into the record——

Exam. Walsh: Suppose you have somebody introduce that as an exhibit.

Mr. Wells: All right.

Exam. Walsh: That would be better.

Exam. Walsh: The next witness, please.

Mr. Miller: Mr. O'Neill.

The occasion for this witness, Mr. Examiner, is only the fact that the Reading Company did not reply to the Commission's order to make cost studies, and we wanted to explain the reasons for their failure to reply.

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C. J. O'Neill was sworn and testified as follows:

[fol. 1874] Direct examination.

By Mr. Miller:

Q. Mr. O'Neill, will you simply explain to the Examiner in your own words the circumstances which gave rise to the fact that no special reply was made by the Reading Company to the Commission's order of investigation, which gave rise to this hearing?

A. Cars of fresh fruits and vegetables for team track delivery on the Reading Railway System in Philadelphia are principally handled at the perishable products terminal, which is a joint operation with the Baltimore and Ohio Railroad, and the Baltimore and Ohio being the operating company, their witness has reported on that operation, which includes our cars handled at that point.

During the period selected to study, which was December of 1950 in this case, we did not handle any cars of fresh fruits or vegetables, for team track at any other of our other Philadelphia stations.

Q. Do you have any figures as to the annual volume of team track deliveries by the Reading Company of fresh fruits and vegetables?

A. For the 11 months of 1950, we did handle 34 cars of fresh fruits and vegetables. That was 29 cars of vegetables and 5 cars of fruit, a total of 34 cars.

Mr. Miller: That is all, Mr. Examiner.

Mr. Kaplan: Nothing to New York?

[fols. 1875-1887] The Witness: Reading don't go into New York.

[fol. 1888] Proceedings of June 5, 1951

E. S. Root previously sworn, further testified as follows:

Cross examination

By Mr. Loos:

Q. Mr. Root, have you checked the paper I gave you yesterday when you were on the stand?

A. I have.

Q. And since then it has been mimeographed and copies have been distributed.

Have you checked the mimeographed copy against the original, or had it checked?

A. I have.

Mr. Loos: I would like this paper, Mr. Examiner, to be identified by exhibit number, please.

Exam. Walsh: This will be 155.

(Protestants' Exhibit No. 155, Witness Root, was marked for identification.)

[fol. 1889] By Mr. Loos:

Q. Now, Mr. Root, in addition to the 28th Street yard—at 28th Street you have a team track and a freight house?

A. That is right.

Q. And industrial tracks?

A. Yes.

Q. And in addition to the Duane Street piers and the 28th Street yard, does the Erie also deliver freight at Piers 28, 67 and No. 7?

A. They deliver freight at Piers 48, 67 and Pier 7 is a shipside operation. The figures that appear in our exhibit relate to import bananas.

Q. And Pier 7 is not a pier operated by the Erie?

A. That is correct.

Q. And at Piers 48 and 67 package freight is received, is it?

A. Yes, sir.

Q. But not fruits and vegetables?

A. No, sir.

Q. In addition to the points already mentioned, does the Erie also operate a yard at 149th Street?

A. It does.

Q. And does it there have a team track?

A. It does.

Q. And industrial?

A. I am not too sure about industrial. There is a freight house.

[fol. 1890] Q. And at 149th Street you receive package freight?

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A. There is l. c. l. and carlot, both.

Q. Do you receive any fruits and vegetables there?

A. We receive some fruits and vegetables there. I think in the year 1950, the principal commodity of that type was grapes.

Q. Now, when you made your study, embodied in your Exhibit No. 146, did you in making your study and quoting operations, and of the switching operations in the various yards, so far as the yards you examined were concerned, cover also cars going to some of these other points?

A. That is correct.

Q. And in that sheet marked Exhibit 155, are the figures there figures that are taken from your work sheet, showing the time or hours or other items, expenses, etc., involved in connection with cars going to some of these other points but related to, or corresponding to, the figures shown in your exhibit?

A. That is correct.

I would like to make one or two qualifications, though.

Q. Certainly.

A. The item on the first sheet, the first item, Monmouth Team Track, the Item of 15.32 minutes, is only based on one car. There was only one car during the test week. The figures on the third page showing the pier rentals, miscellaneous station employees, maintenance and insurance, those appearing on the forth page, are not generally taken [fol. 1891] from our work papers in connection with Exhibit 146 but were specially developed at your request.

Q. And for which I thank you, Mr. Root.

Exam. Walsh: Sheets 3 and 4 of Exhibit 155?

The Witness: That is correct.

By Mr. Loos:

Q. Now, will you refer to page 2 of your Exhibit 146?

Line 7 shows Float Bridge switching at the 28th Street yard. Do you have a corresponding operation at the 149th Street yard?

A. Yes, sir.

Q. But you don't have any figures for that, do you?

A. No, sir. They are not in my exhibit.

Q. And would you be able to give any comparison of the

operation at 149th Street, or 28th Street, so far as the Float Bridge operation is concerned?

Do you think it would be about the same or would 149th Street likely take more time or less time?

A. You are speaking just of the Float Bridge expense?

Q. Float Bridge switching.

A. I would *just* it would be about the same, yes, sir.

Q. Line 8 shows—line 8 of page 2 of your exhibit—shows the team track switching at the 28th Street yard and you have a similar operation at 149th Street, have you not?

A. Yes, sir.

Q. Would you judge that the operation at 149th Street [fol. 1892] would be about the same as at 28th Street?

A. Yes, sir.

Q. Now, will you turn to page——

A. If anything, due to the volume, it would be higher but I think it would approximate the same figure.

Q. Will you turn to page 9, lines 1 to 7 of that page, show miscellaneous employees at 28th Street yard.

A. Yes, sir.

Q. And Lines 8 to 12, police protection?

A. Yes, sir.

Q. At the same time that you are handling cars for the team tracks, or the same days, you are also handling cars, are you not, for the industry tracks and the freight house?

A. That is correct.

Q. Would these figures of miscellaneous station employees and police protection that you have for the team track cars apply also to the cars going to the industry tracks and the freight house or would they be something different?

A. Well, this is only the proportion of the cost applicable to team track cars.

Q. But would there be similar costs applicable to the freight house?

A. There are some similar costs.

Q. And to the industry tracks?

A. Well, there would be no cleaning yard, I don't think, at [fol. 1893] the industry tracks.

Q. But there would be some similar cost, would there not?

A. Not as much.

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Q. The industry tracks would not be as much. Now, would the freight house be as much or more, just generally?

A. I think it would be less.

Q. Now will you turn to page 10? There you show miscellaneous station employees applicable to the fruit and vegetable operations at the Duane Street piers, Lines 1 to 10.

A. Yes, sir.

Q. You have corresponding operations at these piers, do you not, for merchandise traffic?

A. Yes, sir.

Q. And are your accounts in connection with those merchandise operations at Piers 19, 20 and 21, consolidated with the similar operations at Pier 48?

A. Yes, sir.

Q. And that is the occasion, is it, for the figures on page 2 of the exhibit marked 155 for identification, beginning "Miscellaneous Station Employees?"

A. That is correct.

Q. Now, comparing those two columns, the one marked "Fruit and Vegetables, Duane Street," and the other marked "Merchandise," and "Pier 48," is it not correct that for some of the services covered in the first column, Fruit and Vegetables, Duane Street, in lines 1 to 7, the [fol. 1894] corresponding services on merchandise are performed by the contractor? For example, receiving and delivery clerks, line 2?

A. I am afraid I would have to find that out definitely. I am not sure. I am not positive.

Q. You wouldn't say, though, that the merchandise is handled without anything at all for receiving and delivery clerks, would you?

A. I think that that is in—that is included in the contractors' cost but I don't want to state that positively. That is my impression.

Q. The point is that the items in these two columns are not wholly comparable, are they?

A. That is right. There is, for example, on Item 4, these electricians and helpers that we have. While there is some expense applicable to that, it is not included over in the second column. None of these expenses that we have in the first column are applicable to the merchandise operation.

Q. But if you take the totals of each column, including what you pay the contractor, then you have the total expenses for fruits and vegetables and the total expenses for merchandise, haven't you?

A. Covering these particular items, yes, sir.

Q. Now referring still to page 10, miscellaneous station employees, lines 1 to 9, do you have corresponding services [fol. 1895] performed and expenses at Pier 67?

A. We have some expenses that would be similar; not anywheres near to the extent we have in connection with the fruit operation but there are some expenses.

Q. How would it compare with the merchandise operations at Pier 48?

A. Well, I think—there is some, yes, expense. As to what it is, I don't know.

Q. Do you think it would be more or less than the expense at Pier 48?

A. I think it would be less than at pier 48.

Q. Page 17 of your exhibit, which refers to the return on investment, in marine property, per car. You show in line 6, Float Bridge, Jersey City, an item for return on investment, but I do not see on the page anywhere a return on investment for Float Bridge at 28th Street.

A. That is correct. The Float Bridge at 28th Street is fully depreciated.

Q. Does that same situation hold true at 149th Street?

A. No, I do not think so.

Mr. Loos: Mr. Examiner, the exhibit referred to in the heading of Exhibit 155 as Exhibit F, E. S. Root, is Mr. Root's Exhibit No. 146, and with the identification that has been made by Mr. Root, and with the verification of figures made by him, I would like to offer as our exhibit, this No. [fol. 1896] 155 at this time, or later, whichever Your Honor prefers.

Exam. Walsh: You may offer it now.

Mr. Loos: I offer Exhibit 155.

Mr. Smith: If the Examiner please, I have no objection at all to the receipt in evidence of Exhibit 155 but I would like to make this observation:

We don't know, of course, what Mr. Loos intends to use the dat- for, that is shown on Exhibit 155. As the witness

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has said, these figures appear in his papers. By not objecting to Exhibit 155, I don't want to be foreclosed from criticizing whatever use Mr. Loos may make of these data.

Exam. Walsh: That is agreeable to you, Mr. Loos?

Mr. Loos: Sure. I should be the last to ask you to excuse yourself from criticism of anything that I do.

Exam. Walsh: It seems to me all parties have the right to criticize the exhibit introduced by any other party.

Mr. Smith: I merely made that statement because of the unusual circumstances here where the figures in 155 were produced through my own witness.

Mr. Loos: That is all I have.

Exam. Walsh: Exhibit 155 is received in evidence.

(Protestants' Exhibit No. 155, Witness Root, was received in evidence.)

Mr. Wells: May I ask one question, Mr. Examiner?

Exam. Walsh: Mr. Wells.

[fol. 1897] Cross examination.

By Mr. Wells:

Q. Mr. Root, on page 2 of your Exhibit 155, line 13, near the bottom, you show an amount of unloading revenue. Is that computed solely at the unloading charges in the tariff under investigation here?

A. This is not my exhibit.

Mr. Loos: It is my exhibit, Mr. Wells.

Mr. Wells: Of Exhibit 155.

The Witness: The unloading revenue, yes. That is the amount of money we have received under the tariff charge.

I should make this observation, that amount might be as much as $1,000 or $1,500 out because this figure is taken from the station operation report. It does not represent the actual accounting record but it is very close to it.

By Mr. Wells:

Q. In any event there is no amount included in that item of $685,000 for any amounts that may be the line-haul rates for that service?

A. That is correct.

Mr. Wells: Thank you, sir.

Exam. Walsh: You said that the Erie has team track facilities at 149th Street station?

The Witness: Yes, sir.

Exam. Walsh: You don't have any industrial facilities there?

The Witness: I don't recall whether we have or not. [fol. 1898] Exam. Walsh: What is the extent of the team track facilities? I mean as to number of cars that can be placed; do you know?

The Witness: No, I do not know, Mr. Walsh. The reason we did not include 149th Street in preparing the study for 149th Street, it is not located on Manhattan Island.

Mr. LaRoe: Where is it located?

The Witness: In the Bronx.

Mr. Loos: It is a rather small operation, isn't it?

The Witness: It is.

Exam. Walsh: Thank you. You are excused, Mr. Root.

(Witness excused.)

Exam. Walsh: The next witness, please.

JOHN F. ST. GEORGE was sworn and testified as follows:

Direct examination.

By Mr. Thornton:

Q. Will you give your name, please?

A. John F. St. George.

Q. Mr. St. George, what is your employment with the City of New York?

A. I am employed as an assessor in the Office of the Corporation Counsel.

Q. Were you requested by the Corporation Counsel to appraise certain properties located in Manhattan and prepare a report on certain blocks located in Manhattan, on the west side of Manhattan?

[fol. 1899] A. I was.

Q. I show you this, as Exhibit 156, Mr. St. George. Is this the report that was prepared by you, consisting of two volumes?

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A. Yes, sir.

Q. Does that report contain a letter of transmittal to the Corporation Counsel's office setting forth the manner in which you conducted that appraisal?

A. Yes, sir.

Q. Does it also set forth a summary of your appraisal figures?

A. Yes, sir.

Q. Does it set forth your qualifications as an assessor and an appraiser of real property in the City of New York?

A. Yes, sir.

Q. Does this report contain by official block, lot and section number, all properties contained within certain blocks on the West Side of Manhattan?

A. Yes, sir.

Q. Does it also contain a summary of sales of property, the analysis?

A. Yes, sir.

Q. Do you also in this second volume, associated with your primary volume, does it contain photographs of each and every property located within these blocks in the Borough of Manhattan?

[fol. 1900] A. Yes, sir.

Q. When you made this appraisal, Mr. St. George, did you personally inspect the properties within these blocks?

A. Yes, sir.

Q. After you prepared this report, Mr. St. George, did you cause to have a report transmitted to the engineering firm of Ford, Bacon and Davis?

A. Yes, sir.

Mr. Thornton: That is all.

I would like to have this marked as the next exhibit.

Exam. Walsh: The large one will be marked Exhibit 156 and the smaller one, the second one, 157.

(Protestants' Exhibits Nos. 156 and 157, Witness St. George, were marked for identification.)

Mr. Thornton: The witness is available for cross examination.

Exam. Walsh: Cross examine.

Mr. Smith: No questions.

Exam. Walsh: Any questions of this witness?

(No response.)

Exam. Walsh: The witness is excused.

(Witness excused.)

Mr. LaRoe: Mr. Poor.

L. H. Poor was sworn, and testified as follows:

[fol. 1901] Direct examination.

By Mr. LaRoe:

Q. State your name and address for the record, please.

A. My name is L. H. Poor, and my business address is 39 Broadway, New York City.

Q. What is your position with the firm of Ford, Bacon & Davis, Inc., and what has been your experience?

A. I am now employed as a Senior Engineer in the Report Department of Ford, Bacon & Davis, Inc.

For 22 years after graduation from the Massachusetts Institute of Technology in 1923, I was employed by the Pennsylvania Railroad. During this time I held positions of Assistant Yardmaster and Yardmaster in such terminals of the Pennsylvania Railroad as Washington, D. C., Baltimore, Maryland, Chester and Enola, Pennsylvania.

From 1937 until 1945 I was engaged in making special transportation and economic studies for the Vice President of the Eastern Region, in Philadelphia.

Since my employment with Ford, Bacon & Davis, Inc., in November, 1945, I have been engaged continuously with transportation studies for bus lines, street railways, and steam railways in the United States, Canada, the Hawaiian Islands and Mexico. These studies have included the preparation of exhibits giving testimony before the Illinois Commerce Commission, The Public Utility Commission of New Jersey, and an arbitration court in Quebec.

[fol. 1902] In connection with marketing studies for public utility companies in this country and in Canada, I have been responsible for preparing exhibits and giving testimony before the Federal Power Commission.

Q. Have you recently made a study dealing with the costs of terminating fresh fruits and vegetables in New York?

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A. As Engineer in charge I have been responsible for making a study for the Port of New York Authority covering the construction and operating costs which would be involved in expanding railroad team track facilities in Manhattan to handle the fresh fruits and vegetables currently being delivered at pier stations.

Q. Is this document the report to which you refer?

A. Yes, sir.

Q. Was this report entitled, "Report—Cost of Expanding and Operating Railroad Team Track Yards on Manhattan Island to Accommodate Fresh Fruit and Vegetable Traffic Normally Unloaded at Pier Stations dated May 14, 1951" prepared by you or under your direction?

A. This report was prepared by me with the assistance of several of my associates working under my direction.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes, sir.

[fol. 1903] Q. Has that study been incorporated in a volume which has been distributed to the parties and also supplemented by a later study?

A. Yes, sir.

Q. What was the reason for the supplement?

A. The original report, which is dated May 14, 1951, contained information received from the City of New York in a letter dated May 2. On receipt of our copy of Exhibit 156 it was discovered that certain of the figures in Exhibit 156 did not agree with the figures supplied us in the letter of May 2. Consequently we revised the affected figures and prepared the supplemental report.

Q. Did that supplemental report make fundamental changes in the original, or only minor changes?

A. I would consider they were only arithmetical changes.

Q. And not affecting basic material?

A. Of no significance.

Mr. LaRoe: May we have the original study of Mr. Poor marked for identification as 158 and the supplemental Exhibit 159?

Exam. Walsh: That is correct.

(Protestants' Exhibits Nos. 158 and 159, Witness Poor, were marked for identification.)

By Mr. LaRoe:

Q. I want to ask you also whether the changes made by any of the railroad witnesses in their figures, minor corrections made yesterday, will have a sufficient effect on the results of your study to change your figures? In other words, is the result changed enough to bother with those differences?

[fol. 1904]

A. In my judgment the difference is of no material importance.

Q. Not of sufficient importance to confuse us by making the changes in your results?

A. I think it would be preferable to let the results in my report stand as they are.

Q. Now, one more question:

In the Commission's Notice of October 10, 1950, appears this language:

> "And any difference in costs resulting from the fact that pier delivery does not require an investment in team track facilities."

How did you interpret that?

A. My interpretation of that would be that that comparison implied handling similar volume of cars on a team track, as they are handled on piers, or vice versa.

Q. And did you make your study accordingly?

A. That was the basis of our study.

Q. In other words, the basis of your study was to determine whether any difference in cost resulting from the fact

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that pier delivery does not require an investment in team track facilities, would involve a study of the investment in Manhattan real estate required for such team track space [fol. 1905] to take care of the pier cars; is that right?

A. We were requested in our commitment to develop team track facilities to accommodate the present fresh fruit and vegetable traffic now handled at railroad pier stations. That was our study. Obviously, to complete such a study, it was desirable to make some comparison of the costs involved with the existing costs, and on that basis we have shown certain tables in the text of our report on pages 40

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and 41, which compare the estimated cost of delivering fresh fruit and vegetable traffic at adequate team track facilities on Manhattan Island, with the cost of delivering and unloading that traffic at pier stations, as shown in the railroad exhibits.

Q. But you have largely used the railroad figures, of course, have you not?

A. In so far as operating expenses are concerned, we have relied entirely on railroad figures.

Q. And also on figures supplied by the City of New York as to the New York real estate values?

A. In so far as cost of land, cost of real estate is concerned, we have relied on the information provided by the City of New York.

Q. Do you think that the language which I read from the Commission's notice, namely, any difference in cost resulting from the fact that pier delivery does not require an investment in team track facilities, can reasonably be [fol. 1906] interpreted to mean only a study of present pier costs and present team track costs?

Mr. Smith: Mr. Examiner, I don't see any point in getting into an argument as to the meaning of the Commission's notice. All we are interested in here, as I understand it, are the facts. Mr. Poor has told us what he has done and the facts speak for themselves.

Mr. Donadio: I would like to add to the objection by saying that I don't think this witness has been qualified as an interpreter of the language in Commission's notices and orders.

Mr. LaRoe: We will let the Commission interpret its own.

Exam. Walsh: He had to interpret the Commission's notice in some manner in order to proceed with this study. You might ask him how he interpreted this.

By Mr. LaRoe:

Q. You reached an interpretation quite different from that which the railroads reached; is that correct?

A. Based on the testimony I heard yesterday, yes, sir.

Mr. LaRoe: That is all for the present.

Exam. Walsh: Cross examine, please.

Mr. Smith: No questions.

Mr. Donadio: I have no questions.
Exam. Walsh: The witness is excused.

(Witness excused.)

Mr. LaRoe: I want to offer the two exhibits, Mr. Examiner, 158 and 159.
[fol. 1907] Exam. Walsh: Exhibits 158 and 159, Witness Poor, will be received in evidence.

(Protestants' Exhibits Nos. 158 and 159. Witness Poor, were received in evidence.)

Gordon Stedman, previously sworn, further testified as follows:

Direct Examination.

By Mr. Wells:

Q. Mr. Stedman, have you been sworn as a witness in this proceeding at a former hearing?
A. I have.
Q. And for the record here, are you the Acting Secretary-Manager of the Growers and Shippers League of Florida?
A. Yes, I am.
Q. In the usual and ordinary course of business of that Association, does it maintain permanent records of transcripts and exhibits in proceedings before the Interstate Commerce Commission in which that Association is a party?
A. It does.
Q. Is this document, which I hand you, namely, a copy of the official transcript, official stenographer's minutes, Volume pages 1391-A to 1579, Docket 16939, Railroad Commissioners of the State of Florida versus Aberdeen & Rockfish Railroad Company, et al, hearing at Jacksonville, Florida, on April 23 and 24, 1926, a part of your permanent records?
A. Yes, it is.
[fol. 1908] Q. I will ask you whether or not there is also

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in your permanent records a copy of Witness J. J. Neal's Exhibit No. 79?

A. Yes.

Q. And was that Exhibit No. 79 in Docket 16939, being a proceeding involving the line-haul rates on citrus fruit from Florida to destinations including New York, New York, and Philadelphia, Pennsylvania, and the report in 144 I. C. C. 603, was Mr. Neal a witness on behalf of respondent railroads?

A. He was.

Q. And that Exhibit No. 79, to which I referred, and which you have in your file, was that an exhibit purporting to show on behalf of the respondents certain terminal costs, including unloading costs on citrus fruit at New York piers 27, 28 and 29?

A. It was.

Mr. Miller: May I see it, Mr. Wells?

Mr. Wells: Yes, sir.

Mr. Miller: You are talking about ancient history as far as I am concerned.

By Mr. Wells:

Q. Mr. Neal was the occupant of what position with the Pennsylvania Railroad Company?

A. He was Special Agent of the Pennsylvania Railroad System.

Q. In the Accounting Department?

A. In the Accounting Department.

Q. I refer you to page 1527 of the record where Mr. [fol. 1909] Neal was testifying in Docket 16939 with respect to Exhibit No. 79, and ask you to read into the record the paragraph to which I have directed your attention.

A. (Reading):

"The cost as shown on page 1 of the exhibit is $33.92 per car, or $2.60 per ton. The average loading is 13.05 tons for fruits and vegetables, covering shipments from Atlantic Coast Line Railroad, Seaboard Air Line Railway, and Florida East Coast Railway, for the period

September 1, 1924, to August 31, 1925, as per Exhibit No. 36, Sheet 1, Witness W. D. McCaig."

Q. Now, I invite your attention also to the testimony of Mr. O. S. Lewis, a witness in that proceeding, and ask you what was Mr. E. S. Lewis' position?

A. Mr. O. S. Lewis was Freight Traffic Manager of the B. & O. Railroad, Baltimore, Maryland.

Mr. Miller: Mr. Wells, how much is there of this?

Mr. Wells: Just one short paragraph.

By Mr. Wells:

Q. For brevity, may I ask that you read into the record from page 1548 of the testimony of Mr. O. S. Lewis, just the one paragraph, please?

A. (Reading):

"Obviously it is a physical impossibility for the consignee to get a truck alongside a car, car cut, on a car float, and as the only practical way to get to the cars [fol. 1910] in the outside tracks of the float is through the cars on the inside tracks, it becomes necessary for the railroad to undertake the unloading."

Mr. Wells: Mr. Examiner, I do not intend to burden the record with any additional excerpts, although they are available should counsel desire to inspect them, and the purpose for which I am presenting this is to demonstrate clearly in the record here that in the Line-Haul Freight Rate case involving the freight rates from Florida to New York and Philadelphia, there was testimony on behalf of the respondent rail carriers respecting the very costs that are involved in this particular proceeding.

Mr. Donadio: Just a moment, Mr. Wells: I wonder if I could clarify the situation respecting Mr. Lewis' testimony?

Mr. Wells, Certainly.

Mr. Donadio: Was he referring to New York or to Philadelphia or some place else?

I haven't objected to your method of putting this stuff in but it certainly doesn't comply with the rule.

Mr. Wells: I appreciate that I could have had an exhibit

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prepared. He was referring to Pier 22, and the paragraph immediately preceding reads:

> "The trade requires that the property be ready for delivery early in the morning so the movement from Pier 62 to Pier 22 and the subsequent unloading must [fol. 1911] be at night. It is our custom to float each night all cars for which placement orders have been filed up to 5 p. m."

So that the particular reference——

Mr. Donadio: Does that say New York or Philadelphia? In those days—the reason I want to be clear about that is that in those days delivery of fruits and vegetables at Philadelphia were at piers.

Mr. Augello: Have you a pier at Philadelphia?

Mr. Donadio: There were then. I am talking about ancient history times.

Mr. Augello: Do you know whether or not you have a pier at Philadelphia?

Exam. Walsh: Off the record.

(Discussion off the record.)

Exam. Walsh: On the record.

Mr. Wells: Mr. Examiner, I regret that I misstated when I answered the question of Mr. Donadio a moment ago, because the transcript of the testimony of Mr. Lewis, the Freight Traffic Manager of the B. & O., was referring to Pier 22, Delaware River, Philadelphia, and at that time I agree with Mr. Donadio that the fruits and vegetables were floated to the pier and unloaded on the pier in the similar manner as now exists at Piers 27 and 28 in New York City.

Exam. Walsh: It is my recollection that the change was made from the Delaware river-front to the present sta- [fol. 1912] tion, I think in 1927. That is my recollection.

Mr. Donadio: I don't know what year it was. I know it is different now than it was at the time Mr. Lewis testified.

Mr. Fitzgerald: Mr. Examiner, I believe that is made

clear in the record of the last hearing. I think the record will show it was in 1927 some time.

Mr. Smith: I think that is correct.

By Mr. Wells:

Q. Mr. Stedman, considerable reference was made in the testimony and exhibits of Mr. Hodkinson regarding the high and low prices on certain days in April, 1950, on the auction market in New York City of oranges and grapefruit from Florida.

I hand you a publication, an official publication, and ask you to state for the record what it is?

A. This is the Annual Fruit and Vegetable Report, published by the Florida State Marketing Bureau, Jacksonville, Florida.

Q. For what season?

A. For the season 1949-1950.

Q. I ask you to turn to page 46 and refer to the part of that official report reading "Percentage of all freight express bought and truck shipments sold at auction," and state what was the percentage of Florida oranges sold at auction in the season 1949-1950?

A. For the season 1949-1950, 23 per cent of the oranges were sold at auction.

[fol. 1913] Q. And what was the percentage of Florida grapefruit sold at auction in that season?

A. Grapefruit, 30 per cent.

Q. And tangerines?

A. 38 per cent.

Q. Those percentages, shown in that report, are for all Florida// citrus fruit marketed interstate; is that correct?

A. That is right.

Q. And it is not segregated and the percentage is not shown for the New York market alone?

A. No, it is not.

Q. Do you know whether or not all of the Florida citrus fruit delivered in Manhattan is sold at auction or not?

A. It is not.

Q. But the deliveries are made on Piers 27 and 28?

A. Deliveries are made on the piers.

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Q. Are fresh vegetables shipped from Florida and delivered in Manhattan and sold at auction or not?

A. To my knowledge the only fresh vegetable that is sold at auction at all is tomatoes.

Q. And the others are not sold at auction?

A. They are not sold at auction.

Q. Now with reference further to Mr. Hodkinson's testimony on the high price, and the low price, is there any significance to the use of the high and the low price on a particular date?

[fol. 1914] A. None whatsoever, because it does not take into consideration the quality, the pack, the brand, or the volume of fruit being sold on that particular date.

Q. Or the size?

A. Or the size, or grade.

Q. What is this document which I hand you?

A. This is a document covering commercial shipments, average prices for ten auctions, on Florida and California oranges, compiled by the growers' administrative committee from records of the Federal-State Market News Service, and the Florida Citrus Exchange.

Q. The Growers' Administrative Committee is the official committee operating under the United States Secretary of Agriculture in connection with the Agricultural Marketing Act, is it?

A. It is.

Q. Will you refer to that document and state what were the average auction prices—and is that weighted average?

A. Yes, it is.

Q. —on Florida oranges for the week ending April 7, 1950?

A. For the week ending April 7, 1950, the price was $5.43.

Q. What is the corresponding price in the corresponding week of 1951?

A. $4.23.

Q. And for the week ending April 14, 1950?

[fol. 1915] A. $5.26

Q. The corresponding price for the similar week in 1951?

A. $4.25.

Q. The week ending April 21, 1950?
A. $5.19.
Q. The corresponding week in 1951?
A. $4.74.
Q. And the week ending April 28, 1950?
A. $4.96.
Q. And the similar week in 1951?
A. $4.31.
Q. Will you refer please also to the same averages for Florida grapefruit in the week ending April 7, 1950?
A. The price was $5.41.
Q. The corresponding week in 1951?
A. $3.85.
Q. The week ending April 14, 1950?
A. $4.96.
Q. And the corresponding week in 1951?
A. $3.79.
Q. The week ending April 21, 1950?
A. $4.91.
Q. And the corresponding week in 1951?
A. $4.00.
Q. And the week ending April 28, 1950?
[fol. 1916] A. $5.26.
Q. And the corresponding week in 1951?
A. $3.71.
Q. And those are the weighted average prices which are used by the Growers' Administrative Committee in the performance of its official functions under the Agricultural Marketing Act?
A. They are.

Mr. Wells: I think that is all on direct.
Mr. LaRoe: I have no cross examination but I would like to get one point cleared up.
What is, just in a word, the present picture of the citrus fruit industry in Florida, as related to the juices versus the natural fruit?
The Witness: You mean the quantity that is being shipped fresh as compared to that that is going into cans?
Mr. LaRoe: Yes.
The Witness: There is a little better than 50 per cent going into cans at the present time.

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Mr. LaRoe: As compared to what, we will say, a decade ago?

The Witness: Oh, I haven't the figure but I would say that it has doubled in that period of time.

Mr. Miller: What has doubled?

The Witness: Well, from 25 per cent to 50 per cent.

Exam. Walsh: That is the canned fruit?

The Witness: That is right.

[fol. 1917] Mr. LaRoe: Do the oranges and grapefruit that move north in the natural fruit come into competition with the juices? Is there competition in the average household?

The Witness: They certainly are in competition.

Mr. LaRoe: Is it very keen competition?

The Witness: It is keen competition.

Mr. LaRoe: Is there or is there not a tendency today for the juices to gain in public favor more rapidly than the natural fruit does?

The Witness: Juices in cans have gained very rapidly and much more rapidly than fresh fruit.

Mr. LaRoe: And does that have or does it not have a tendency to reduce the quantity of natural fruit that is shipped from Florida to the north?

The Witness: It has reduced it to some extent, but because of the growth of the citrus industry in Florida, the fresh fruit is maintaining just about its balance that it has obtained during the past five years.

Mr. LaRoe: But not gaining as the juices are?

The Witness: No, it is not.

Mr. LaRoe: That is all. Thank you.

By Mr. Wells:

Q. Mr. Stedman, in order that the picture may be fully shown, and correctly, when you have referred to canned citrus juice, are you including there just the canned citrus juice, or what is known in the industry as a single strength [fol. 1918] juice, or what product are included in that term as you have used it?

A. Including both, what is commonly known as single-strength juice and frozen fruit concentrates.

Q. Are you also including the citrus sections, canned?

A. Yes.

Q. And the development as to the frozen citrus juice concentrated has been within the last two or three years; is that true?

A. That is correct. The industry has been in operation about four years but the big growth has been in the last two years.

Mr. LaRoe: I didn't ask you about the grapefruit sections but is there competition that is keen there, in the average family, between the grapefruit in its natural state and the grapefruit sections? Can you substitute one for the other?

The Witness: Yes. There is very keen competition between the two.

Mr. LaRoe: You understand, don't you, that under this proposal here if you ship the natural grapefruit to New York you pay this unloading charge?

The Witness: Yes, sir.

Mr. LaRoe: And if you ship in cans the grapefruit sections to the same pier, unloaded on the same pier, that there is no unloading charge?

The Witness: That is correct.

[fol. 1919] Mr. LaRoe: That is all.

Exam. Walsh: Any cross examination of the witness?

Mr. Smith: No questions, sir.

Mr. Wells: That is all, Mr. Examiner.

Exam. Walsh: The witness is excused.

(Witness excused.)

Exam. Walsh: We will take a short recess.

(Short recess taken.)

Exam. Walsh: We will resume the hearing, gentlemen.

Mr. Fitzgerald: Mr. Ward.

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DONALD T. WARD was sworn, and testified as follows:

Direct examination.

By Mr. Fitzgerald:

Q. Will you give your name and address?

A. My name is Donald T. Ward and the business address is Fidelity-Philadelphia Trust Building, Philadelphia, Pennsylvania.

Q. What is your occupation?

A. I am Chief Industrial Engineer, associated with the firm of Worden & Risberg, management consultants and industrial managers.

Q. In order to clarify the record, it is correct, is it not, that you are entirely unrelated to the Donald W. Ward who appeared in earlier hearings in this case as a witness for the protestants?

[fol. 1920] A. Yes, that is correct. I am unacquainted with the Mr. Ward whom I understand testified at earlier hearings. I have never had any connection or relationship with the Philadelphia Terminals Marketing Association, of which that Mr. Ward was General Manager at the time of the previous hearing, nor have I had any connection with this proceeding until about April 15, 1951.

Mr. Fitzgerald: Mr. Examiner, Mr. Ward's testimony has been distributed to all parties.

Exam. Walsh: We will copy it in the record.

Is that agreeable to the parties?

Mr. LaRoe: Yes.

By Mr. Fitzgerald:

Q. Will you please state your education and experience as an industrial engineer?

A. I graduated from the Sheffield Scientific School of Yale University in 1929 and between that time and 1947, when I became associated with Worden & Risberg, I was successively engaged as industrial engineer with General Electric Co., Grinnell Co., manufacturers of sprinklers, for about 15 years, and for about two years as plant manager for American Chain and Cable Company at Camden, New Jersey.

I am in my fifth year with Worden & Risberg and am now

Chief Engineer engaged in making surveys and analyses and installing cost controls, maintenance and control installations and management studies for numerous corporate enterprises, governmental agencies and the like. I was previously President of the Philadelphia Chapter of the [fol. 1921] Society for Advancement of Management.

Q. Will you give an illustration of the type of work you are now engaged in?

A. At the present time, I am making operating analyses of the Departments of the City of New York, our firm having been engaged by the City as consultants for this purpose.

Q. Have you previously given testimony in public hearings in your capacity as industrial engineer?

A. Yes. In 1947, I testified in public hearings before the United States Senate Post Office Committee on behalf of the Publishers' Association, and in 1949 testified at hearings conducted by the State of Maryland concerned with the reorganization of the State's institutional set-up, our firm having been engaged as consultants by the State in that matter.

Q. Have you recently made a study of unloading of fruits and vegetables at railroad terminals in Philadelphia?

A. I have. The firm of Worden and Risberg was consulted concerning the preparation of engineering studies of carlot unloading of fruits and vegetables at the Pennsylvania-B & O terminals at Philadelphia and Baltimore.

Q. Over what period was your survey made and what is your opinion as to the representative character of this period?

[fol. 1922] A. Field studies were conducted during the two weeks period April 25-May 9, 1951. While the volume varies materially between certain week days, our studies take this fact into consideration.

From an analysis of car unloading records of the United States Department of Agriculture we established that from a seasonal point of view the period covered by our survey presented a normal volume. In my opinion, therefore, the period selected for making time studies was sufficiently representative for our purpose. Additional time would have been merely cumulative.

Q. Where and how were your surveys made?

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A. Our engineering studies were made at Pennsylvania Produce Terminal, Delaware and Oregon Avenues, Philadelphia, the Philadelphia Perishable Products Terminal of the B. & O.—Reading Railroads at Delaware Avenue and Wolf Street and Pennsylvania Railroad Produce Terminal at Baltimore, Maryland, by a graduate engineer in the employ of our firm who reported to and was supervised by me and Mr. Risberg, a partner of the firm.

Q. Now, Mr. Ward, inasmuch as the record contains rather voluminous detail as to the physical layout of the two produce terminals at Philadelphia, I will not ask you to describe the facilities and equipment except as you may deem it necessary in the course of your testimony.

I now ask you if you have prepared an analysis covering [fol. 1923] your time studies?

A. I have. Request is made that Exhibits 160 to 169 be marked for identification.

Q. Before discussing your exhibits separately, do you wish to make any general comments respecting the operations covered by your surveys?

A. The manner of bringing cars to the unloading platforms has been previously described in other testimony, and since such operation has not changed, it will not be repeated herein. We have observed that the railroad, in any case, is notified well in advance of what cars are to be brought in for unloading that night.

For Sunday's unloading, by far the heaviest of the week, the railroad is generally notified by 2:30 Saturday afternoon and on other days by 4 o'clock of the afternoon of the same day. Observation indicates that it is seldom earlier than 10 o'clock that unloading actually begins, and usually it starts around midnight, so that at least six to eight hours time is available to the railroad for bringing in the proper number of men to perform the work required.

Prior to unloading, the car seals are inspected by the R. P. I. A. personnel and/or the Railroad's General Foreman, to insure that the freight has not been tampered with. The actual unloading operation as carried on at both railroads is the same in principle; however, the method of unloading differs slightly.

[fol. 1924] At the Pennsylvania Railroad "A" platform, a crew of six is used with functions divided as follows:

Two unloaders work in the freight car, lifting crates on to four-wheeled hand trucks; two truckers are engaged in moving the loaded trucks to the platform point of temporary storage; there, two more men sort and stack the freight according to style, size, etc.

When the trucker pushes his loaded truck to the point at which the stacking is being done, he relinquishes it to the sorter and takes an empty truck, which has previously been unloaded, back into the freight car for loading. Consequently, there is no appreciable delay in waiting for the unloading of any truck.

At "B" Platform of the Pennsylvania Terminal, the operation varies slightly, depending on the work load, the type of freight, and its condition.

The merchandise here consists primarily of vegetables, and the packs are of different types—from crates and baskets to an assortment of paper, cloth, or burlap bags, etc.

The unloading crews are comprised of four men—two in the car and two trucking—with the stacker and sorter being employees of the consignee, who also inspect and reject or set aside freight considered doubtful as to quality.

The equipment used is a two-wheeled hand truck with a five-foot wooden extension over the lip, instead of the four-[fol. 1925] wheeled type used on the "A" Dock or at the B & O Terminal. The amount loaded on the truck will vary with the type of freight which is being unloaded. While it has been claimed by respondents in earlier hearings that the inspection performed by the consignee's men slows down the over-all operation, our time studies have shown any such delay to be insignificant.

At the B. & O. Terminal the operation is the same as at the Pennsylvania "A" Platform, except that an extra man with a small tractor is used. This man services a number of crews and tows a string of loaded, coupled platform trucks from the car to the proper platform location, returning with empties.

Q. Will you summarize the results of your time studies, referring to each supporting exhibit as necessary?

A. We have regarded unloading as "the service of moving the freight from the cars to locations on the piers or station platforms," which is the respondents' definition as stated in one of their briefs in this case. In our observa-

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tions, the time included has been from the moment that the unloaders open the car door to the time that the last material is sorted and stacked from a particular car by the group which is charged with unloading that car.

Six nights of studies in all were conducted at the Philadelphia Terminals. Time recorded is actual watch time, be-
[fol. 1926] ginning with the first car and continuing until the completion of the last car. Therefore, total hours, in all cases, include any "waiting" time that may have occurred, plus time required for the sporadic performance of any extraneous tasks that may have been required.

Also, the hourly rate for unloading labor was given at the Pennsylvania Terminal as $1.57, and this is the figure used throughout, even though a piece-work arrangement is in effect at the B. & O. Terminal.

Actually, with piece work, the cost should be less through more productive effort, so using $1.57 per hour should be on the conservative side.

Our first study was made at the "A" Platform of Pennsylvania Terminal, Wednesday, April 25th, as shown by Exhibit 160. The number of cars checked was 6 with total man-hours—unloading crews—of 40.14 or an average of 6.69 man-hours per car. The labor cost for actual unloading operation at $1.57 per hour was $63.02, with average labor cost per car of $10.50. The total amount billed the Auction Company was $280.99 at an average cost to Auction Company of $46.83 per car.

On Sunday, April 29, at the B. & O.-Reading Terminal, as shown by Exhibit 161, we checked 21½ cars. The total man-hours—unloading crews—of 127.62 averaged 5.93 man-hours per car. The labor cost for actual unloading operation at $1.57 per hour was $200.36 with average labor cost
[fol. 1927] per car of $9.32.

The total amount billed to Auction Company was $1015.32 at an average cost to Auction Company of $7.22 per car.

On Wednesday, May 2, at Pennsylvania Terminal, as shown by Exhibit 162, we checked 12 cars, with total man-hours—unloading crews—of 79.80 or an average of 6.65 man-hours per car. The labor cost of actual unloading

operation at $1.57 per hour was $125.29 or an average labor cost of $10.44 per car. The total amount billed to Auction Company was $578.23 or an average cost to Auction Company at $48.18 per car.

On Thursday, May 3, at Pennsylvania Terminal, as shown by Exhibit 163, nine cars were checked with total man-hours —unloading crews—of 63.60 or an average of 7.06 man-hours per car. The labor cost for actual unloading operation at $1.57 per hour was $99.85 with average labor cost of $11.09 per car. The total amount billed to Auction Company was $430.44 or an average cost to Auction Company of $47.82 per car.

On Sunday, May 6, at Pennsylvania Terminal, as shown by Exhibit 164, 15 cars were checked with total man-hours—unloading crews—of $85.20 or an average of 5.68 man-hours per car. The labor cost for actual unloading operation at $1.57 per hour was $133.76 or an average labor cost per car of $8.92. The total amount billed to Auction Company was $708.22 or an average cost to Auction Company per car of $47.21.

[fol. 1928] On Sunday, May 6, at B. & O. Products Terminal, as shown by Exhibit 165, 20 cars were checked with total man-hours—unloading crews—of 111.60 or an average of 5.58 man-hours per car. Labor cost for actual unloading operation at $1.57 per hour was $175.20 at an average labor cost per car of $8.76. The total amount billed to Auction Company was $877.69 or an average cost to Auction Company per car of $43.88.

Q. It is correct, is it not, that the foregoing surveys apply to the operations of unloading citrus and other fruits for sale at auction and that they do not include unloads at "B" Platform of the Pennsylvania Product Terminal of perishable produce handled at so-called private sale as distinguished from auction sale?

A. That is correct.

My Exhibits 168 and 169, however, cover additional surveys which were made at "B" Platform.

On May 2, three cars of Florida tomatoes were checked on "B" Platform. Total man-hours eight, direct labor

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cost at $1.57 per hour $12.56, total amount billed consignee $58.77.

On May 3, four cars of Florida potatoes, one car of tomatoes and two cars of onions were checked. Total man-hours 30.28, total direct labor cost at $1.57 per hour $42.83, total amount billed consignees $171.38.

On May 6, 1951, twelve cars of assorted commodities were checked. Total man-hours 45. Direct labor cost [fol. 1929] $70.65. Amount billed consignees $263.68 as shown by Exhibit 168.

For all cars studied at "B" Platform the average direct labor cost per car was $5.73 while the average unloading charge billed was $22.45 per car as shown by Exhibit 169.

Q. What studies were made at Baltimore?

A. In view of the fact that at Baltimore the consignees are permitted to perform their own unloading, a trip was made to observe operations, determine man-hours per car involved, and obtain an estimate of direct labor cost, as well as total cost, including all overhead charges, etc.

On the morning of May 8 the following information was gathered:

On 10 cars checked the total man-hours—unloading crews—were 54.46 or an average of 5.44 man-hours per car. The total crew cost was $78.85 or an average crew cost per car of $7.89 as shown by Exhibit 166.

In addition to the above figures, it was determined from the Auction Company that total cost, including all charges, amounted to $16.50 per car. This contrasts with an average of $46.59 per car at Philadelphia. Furthermore, there appeared to be no basic differences between the Terminal operations at Baltimore as contrasted with Philadelphia.

Q. What is the source of the figure in the last column of each of your Exhibits 160, 161, 162, 163, 164, and 165, headed "Billed to Auction Company," and in your Exhibit [fol. 1930] 168, headed "Billed to Consignee?"

A. This is in all cases the tariff unloading charge assessed by the railroad against the Auction Company on a separate freight bill issued in connection with each car and includes 3 per cent Federal Tax.

Q. What are your conclusions as to the ratio of true labor costs to the tariff unloading charges as assessed by the carriers against the consignee?

A. Exhibit 167 contains a summary of the studies made. As can be seen, a total of 83½ cars was involved at Philadelphia for sale at auction with a total direct labor cost of $797.48 as contrasted with a total unloading charge billed by the carriers to Auction of $3890.82. The ratio is almost 5 to 1.

Q. What is the basic difference between the unloading operations as observed by you at Baltimore as compared to Philadelphia and what conclusions have you reached with respect to difference in costs of the two unloading operations to the consignee?

A. Essentially the same operation as at Philadelphia exists at the Terminals in Baltimore, Maryland. However, the actual total expense to the Auction Company at Baltimore is a stated $16.50 per car, which includes all unloading cost, rent, salaries, general overhead, etc. Yet, for the same benefits the Philadelphia consignee must suffer a sur- [fol. 1931] charge of nearly $30 per car because (a) the tariff is unreasonably high, and (b) he is not permitted to do his own unloading, as is the practice elsewhere.

If Philadelphia platform cars unloaded in April, 1951, were instead unloaded in Baltimore, the cost to the consignees would be $11,500 versus an actual tariff cost of $32,000.

Q. In your opinion are the labor costs involved in the unloading operations at "A" and "B" platforms of Pennsylvania Produce Terminals comparable so as to justify the same unloading charge as now prescribed by tariff, based upon your study of actual operations?

A. No, the average direct labor costs are shown to be from 35 to 50 per cent less at "B" than at "A" platform for our studies. The reason for this great variance is in considerable part that "B" Platform cars are customarily unloaded by four railroad employees with two employees supplied and paid by the consignee to perform sorting and stacking operations which must be paid in addition to the unloading charge. This operation is performed by railroad

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employees on "A" Platform but the tariff unloading charge is the same in each case. I may say, however, that the average billing per car of $22.45 shown on my Exhibit 169 is probably somewhat lower than the annual average would be, due to the fact that some commodities were running light loads at the time of our survey and as indicated in Exhibit 168 our study included some part-cars.

[fol. 1932] Q. Are you familiar with warehousing and unloading procedures and accounting practices as they are applied to warehouse operations in American industry?

A. Yes. I have made numerous analyses, controls and have set up systems in this connection.

Q. What is your opinion of the cost of unloading as asserted by the respondents in this case as compared to cost of handling of such operations in industry?

A. In private industry a large user of fruits and vegetables would have similar platform, warehouse, labor and overhead requirements as do the railroads. One of the largest processors of foods in the country has the following total standard costs for unloadings:

Celery—75 pound crates, $11.30 per 20-ton car.
Beans—100 pound bags, $6.80 per 20-ton car.
Potatoes—100 pound bags, $9.80 per 20-ton car.

These figures are typical and cover all expenses, even to building investment, maintenance, janitor service, and the like. With such figures existent in industry, it is difficult to see how the carriers can justify an average charge of over $46 per car.

The receivers, however, could operate their own Terminal for much less than $46 per car. Aside from the cost experience of Baltimore produce people, industry has shown that a large receiving and warehousing department which [fol. 1933] is a fairly simple operation requiring relatively little capital investment from industrial management standpoint, can be operated for far less than the tariffs presently being charged to Philadelphia consignees.

Q. Your time study analysis shows that the prime labor cost of unloading a car of produce at "A" Platform in Philadelphia is $9.55. In your opinion what would be the maximum extent to which this labor cost might be increased

to include all proper items of indirect labor expense, supervision and general overhead, based upon standard accounting practices in private industry?

A. Usually the multiplier employed in industry to translate direct labor costs of unloading into a figure representing all costs including properly chargeable indirect labor expense and general overhead should not exceed 50 to 60 per cent. For example, the multiplier of the Food Processor previously referred to is an actual 47 per cent. A 100 per cent factor would certainly be excessive in any case. Yet, even with this multiplier the total unloading cost would only be $19.10 or less than half of the present average tariff.

Mr. Fitzgerald: I offer for identification Mr. Ward's exhibits which have been marked Roman numerals I to X, inclusive, all of which have been distributed to the parties under the rules.

I believe those exhibits will become——

[fol. 1934] Exam. Walsh: 160 to 169, inclusive.

(Protestants' Exhibits Nos. 160 to 169, Witness Ward, were marked for identification.)

Mr. Fitzgerald: I offer for identification Exhibits Nos. 170 and 171, which have been distributed to all the parties, and which are marked respectively Roman numerals XI to XII.

Exam. Walsh: They will be so marked.

(Protestants Exhibits Nos. 170 and 171, Witness Ward, were marked for identification.)

By Mr. Fitzgerald:

Q. Now, Mr. Ward, in accordance with the Examiner's rule, your prepared testimony has been written into the record without the necessity of its being read, and I will ask you a couple of supplemental questions:

As a management consultant, what is your opinion of the efficiency of the present operation as conducted by the carriers at the Pennsylvania Produce Terminal of the Pennsylvania Railroad, and the Philadelphia Perishable Products Terminal of the B. & O., Reading, about which you have already testified?

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Mr. Donadio: I object to the question. That asks for a conclusion of this witness, which I submit he is not qualified to give.

Exam. Walsh: Read the question, please.

Mr. Donadio: In spite of his experience or his education and present position.

(Question read.)

[fol. 1935] Exam. Walsh: Do you believe you are qualified to go into the efficiency of the railroad operation?

The Witness: No, sir. I think that Mr. Fitzgerald was referring to the operation of unloading, sir, of the cars, specifically, if I understand him correctly.

Mr. Fitzgerald: May I say, Mr. Examiner, that is correct. The testimony which has just been read into the record deals specifically with the unloading operation as observed by Mr. Ward and his associates and assistants.

Exam. Ward: I haven't ruled on this yet, but I would like to know, have you ever supervised the unloading of freight?

The Witness: No, sir, but I have just recently finished the installation of the wage-incentive system which established a wage incentive plan for three warehouses in a large company in Toledo.

Exam. Walsh: How would that be connected with your knowledge of efficient or inefficient unloading of freight?

The Witness: By my familiarity with the methods usually used in unloading freight, and their possible application at the Pennsylvania, or the B. & O. Terminal.

Exam. Walsh: With that background, I will let you answer. Objection overruled.

I will let him answer.

Mr. Donadio: I would like to have an exception.

Exam. Walsh: Exception.

By Mr. Fitzgerald:

Q. Answer the question.

[fol. 1936] A. My observation was that the using of a basic six-man crew, which is the practice, or where that is the practice, the operation of unloading is quite efficient.

The second observation that I made or am making is that

looking at it from an engineering standpoint, it would seem possible to possibly replace the truck, the loading, the transportation of the fruit or vegetables from car to the place on the platform by portable conveyors, which would of course eliminate two truckers out of a six-man team but a six-man crew in itself makes good use of their time.

Q. And that is what you meant when you said that the operation now was efficient; is that correct?

A. Yes.

Q. In other words, that the men are not loafing on the job; they are hustling, as you have observed them?

A. Yes.

Q. But it is your opinion that the operation could be rendered more modern and less an operation involving pure hand work——

Mr. Donadio: I object to the leading form of the question, Mr. Examiner.

Mr. Fitzgerald: May I continue?

Exam. Walsh: Continue.

By Mr. Fitzgerald:

Q. —if the operation were improved by the installation of portable conveyors; is that correct?

Mr. Donadio: I object to leading questions, Mr. Examiner. [fol. 1937] If Mr. Fitzgerald wants to take the stand let him take the stand and I will object to his testimony.

Exam. Walsh: The question is leading. Suppose you reframe your question.

Mr. Fitzgreald: I will withdraw the question, Mr. Examiner.

By Mr. Fitzgerald:

Q. Are you familiar with comparable unloading operations in other plants where the type of portable conveyor system that you referred to has been put into effect?

A. Yes.

Bernhein Distilling Company, of Schenley, uses such a conveyor, for instance, for unloading cartons of bottles from their receiving platform and transferring them down an incline to a basement, where they are there disposed of.

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Plascon Division of Libby-Owens-Ford at Toledo unloads drums from box cars by a conveyor.

General Electric Company in Bridgeport started using those types in 1940, about ten years ago, or 11 years ago.

Exam. Walsh: When you say "those types" you mean those types of conveyors?

The Witness: Yes, sir.

By Mr. Fitzgerald:

Q. Is it your opinion that the type of lading at the Pennsylvania Produce Terminals, and I include both of them, adapts itself to this type of operation?

A. I would say the majority of it does, the citrus fruits [fol. 1938] especially.

Q. Do you care to comment on that any more fully?

A. Only to say that in fairness to the statement, a rough cost comparison would be the possibility of saving, say, $6,000 a year per crew for the expenditure of, say, a couple of thousand dollars for portable conveyors, per crew.

Q. Would it in your judgment improve the handling of these packages as respects breakage?

A. I would say it would not. It would have no bad effect on the handling. It would cause no more damage than it does now.

Exam. Walsh: What do you base that on?

The Witness: There is a certain amount of damage now which is presumably inevitable. The men move pretty quickly and sometimes quite possibly fall and possibly they are already weakened, but crates do break open. On a conveyor I would say that the chance of their breaking open in the movement would be minimized; it would be no more and probably less.

Exam. Walsh: There is a lot of "probability" and "chance" in here.

By Mr. Fitzgerald:

Q. Mr. Ward, at the present time these boxes of fruit and other commodities are piled on to a truck about four tiers high, are they not, for handling from the car to the platforms?

A. Not quite as high as that, as a rule.

Q. Well, what is the height?

[fol. 1939] A. Two tiers as a rule.

Q. How many cartons are packed on?

A. About ten, if you are talking about orange crates.

Exam. Walsh: Are they handled on a hand-truck or on an electric truck?

The Witness: They are handled on a hand truck of varying types.

Exam. Walsh: Man operated hand truck?

The Witness: Yes, sir.

Exam. Walsh: With a rack?

The Witness: Yes, and some are four-wheel trucks, four-wheel platform trucks. The Pennsylvania, for instance, uses a four-wheel platform truck.

By Mr. Fitzgerald:

Q. And the boxes are piled on to this truck and then handled off of it again and stacked; is that correct?

A. Yes, sir.

Q. Now, if they used a conveyor, the boxes would go individually, would they not, from the cars to the place——

A. The usual practice is to roll the conveyors in such a way that they are rolled into the car over the lip and plugged in; probably every other one would be operated by a motor. There would be a belt conveyor. The crates would be placed on the conveyor. They would move out to the unloading spot and be taken off there by the stacker.

[fol. 1940] Q. Now, Mr. Ward, I direct your attention to your Exhibits Nos. 170 and 171 and ask you if you will state to the Examiner and the parties how you went about preparing these exhibits?

A. Exhibits 170 and 171 were prepared from Exhibits 149 and 152 already submitted. For each railroad they show the breakdown by cost item of the difference in costs between terminal and team-track costs and then they also show —excuse me—since the same list of cost items has been used in both exhibits it gives a comparison item by item between railroads, the two railroads, of this difference in cost claimed between terminal and team-track operation.

Q. And when you refer to both exhibits you are referring

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to Exhibits 149 of Mr. Heywood and 152 of Mr. Talbott? Is that correct?

A. Yes, sir.

Q. So that upon your analysis of the figures which have gone into Mr. Heywood's Exhibit 149 and eliminating all the items which he has stated to be common to both operations, you arrive at a per car total claimed cost, as stated by Mr. Heywood, of $69.72?

A. Yes, sir.

Q. For terminal operation?

A. Yes, sir. That represents the difference as indicated in the footnote of $96.68 per car for terminal and the $24.96 for team-track, shown on page 16 of Mr. Heywood's Exhibit 149.

[fol. 1941] Q. And the rest of the data on your Exhibit No. 170 breaks down according to the accounting heads used by Mr. Heywood of the items going into that total of $69.72.

A. Yes.

Q. And of that total what is the amount that is developed by the actual unloading operation?

A. The amount that would seem to be comparable to the operations we observed was the $18.37, appearing under "Transportation," and entitled, "Wages earned at and chargeable to Pennsylvania Produce Terminal" and appearing on pay rolls at South Philadelphia Freight Station.

Q. Were you able to make any further analysis from the pay records of the data going into that item of $18.37 wages?

A. No, I was not.

Q. Now, in referring to Exhibit No. 171, this is prepared in precisely the same manner from Mr. Talbott's exhibit; is that correct?

A. Yes, sir, except that I retained the cost item names used by the Pennsylvania Railroad in order to make the two comparable.

Q. In so far as such widely differing result as reached by these two gentlemen could be compared; is that correct?

A. Yes.

Mr. Fitzgerald: I have no further questions.

Exam. Walsh: Cross examine.

[fol. 1942] Cross-examination.

By Mr. Miller:

Q. I take it, Mr. Ward, that you think that at the Pennsylvania Terminal in Philadelphia, it would be better to use a movable conveyor; is that correct?

A. Yes, sir.

Q. Have you ever installed a conveyor in a situation of this kind?

A. Not in connection with a produce terminal, no, sir. I have seen them used in many cases where you had a similar problem of moving material from a car to a fixed place, intermittently.

Q. How is this conveyor going to operate? I take it is going to be a power conveyor; is that right?

A. Yes. People like Louis Sheppard sell conveyors of that sort in ten foot lengths.

Q. This is going to be a power conveyor?

A. Yes, sir.

Exam. Walsh: We are not advertising anybody's product.

The Witness: I beg your pardon, sir.

By Mr. Miller:

Q. How far off the floor will the conveyor be, Mr. Ward?

A. They are usually about two feet above the level of the floor Mr. Miller.

Q. How far will the conveyor run out on the station platform?

A. About 60 feet.

Q. That is, to the center of the platform?

[fol. 1943] A. Leaving an aisle down the middle.

Q. Who is going to move the packages from the end of the conveyor to the place on the platform near the car door?

Mr. Fitzgerald: The question isn't clear to me.

Exam. Walsh: It is clear to me.

The Witness: Yes, I understand.

The conveyor goes right into the car, sir.

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By Mr. Miller:

Q. But when your packages come out and reach the end of the conveyor who then is going to take them from the end of the conveyor 60 feet to the car door to the place where they are put on the platform about 15 feet from the car door?

A. The conveyor would unload at the same point as the truck unloads now, sir.

Q. This is going to be a power conveyor and it is going to move the packages steadily from the car door out to the center of the platform; is that right?

A. Yes.

Q. And they are going to reach the end of the conveyor at the center of the platform?

A. Yes.

Q. Isn't it correct that some of those packages are actually placed at rest on the floor, a distance of about 15 or 20 feet from the car door?

A. Yes, I see your point.

Q. Who is it that is going to carry the package from the end of the conveyor at the middle of the platform back to [fol. 1944] the edge of the platform?

A. Well, sir, if you are unloading nearer the car door, as you do when you start in, then you would pick it off the conveyor at that point.

Q. Isn't it true that these packages come out in an entirely different order from the order in which they are stacked on the platform floor?

A. Yes, they do.

Q. So that it would not be practicable to use a conveyor in actual operation?

A. I think it would be, sir.

Q. Then you are going to have your man stand alongside the conveyor and pull his particular package off the conveyor at his location on the platform?

A. You have two men there and you would continue to have two men doing that.

Q. You are going to have two men stacking the packages on the floor; is that right?

A. Yes, two men unloading and stacking as you do now.

Q. And these packages are going to be moving right along in a continuous stream; isn't that correct?

A. Yes, they do. They would.

Q. All right. When a package—say, for example, that the marks on one package are "A" and the marks of another package are "B", the "A" package is to be placed at a [fol. 1945] point 20 feet from the car door, and the "B" package is to be placed near the center of the platform. I take it then that the man picking off the "A" packages will stand alongside the conveyor and he sees the particular marks on his package and immediately picks it off and places it on the pier floor alongside his spot, alongside the conveyor; is that the operation you have in mind?

A. That might be a little difficult, to do that, to see that as it goes by, but the portable conveyor would, I feel, the saving that you would get by eliminating the two truck men, would pay for the slight extra time it would take to move the boxes from the end of the conveyor or any point thereon to the actual place where a particular box was supposed to be piled.

Q. How would the man carry the box from the point at the center of the platform, the 40 foot distance to the place where it is to be put at rest?

A. Well, I realize these packages are, some of them, run up to 50 or 60 pounds and he would probably have to do some amount of trucking himself.

Q. In other words, then, he would take the package off the end of a conveyor and put it on a truck and carry it back toward the car?

A. In some cases he would have to do that.

[fol. 1946] Q. Now, in cases where you are unloading one car toward the west end of the building and another car between that car and the place where those packages are to be placed on the platform, how are the two conveyors going to be operated?

A. May I understand you correctly?

Q. That is, you have a line of freight moving from one car in an easterly direction, crossing over the line which the freight takes moving from an intermediate car direct across the platform so that you necessarily have your conveyors crossing.

A. There are a good many cases, especially in the B. & O. Terminal, where a car is unloaded out of place, you might

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say, and which is apparently the reason for the tractor team. Those would have to be brought down by truck.

Q. You wouldn't use a conveyor on those?

A. No, I said it would be usable in, not all cases, in the majority of them.

Exam. Walsh: But you have had no experience in unloading freight?

The Witness: Sir, you asked if I had supervised the operation of unloading freight?

Exam. Walsh: Yes.

The Witness: I said that I had not but that I had studied the methods of unloading freight and recommended methods which had been used.

Exam. Walsh: In freight stations, on railroads?

[fol. 1947] The Witness: Not in railroads, no, sir, but unloading operations of sufficiently similar character to justify a comparison.

Exam. Walsh: Have you given consideration to the fact that unloading at Schenley's, cartons of bottles, cartons would be all of a uniform size?

The Witness: Yes, sir, that is true.

Exam. Walsh: Do you find railroad freight in uniform size packages?

The Witness: No. However, I think that the freight coming in the Pennsylvania and B. & O. Terminals are confined to bags and crates, which is, for instance, different from Sears-Roebuck, where you may have it coming through in any form.

Exam. Walsh: Would you have a conveyor for every car?

The Witness: You would have to do that, sir. They have as a rule about four cars unloading at once, as I recall, or maybe five in some cases.

Exam. Walsh: What is the length of the unloading fruit and vegetable platform at Philadelphia? How many cars can it accommodate?

Mr. Miller: About fifteen, my recollection.

The Witness: Yes, that is true.

Exam. Walsh: And they may be unloading all of those cars at one time in order to facilitate the movement; they would have to.

The Witness: Yes, sir. The most cars that I have seen

[fol. 1948] unloaded at Pennsylvania has been around five at once, I would say.

Exam. Walsh: How often have you been in the Pennsylvania Terminal?

The Witness: I have been in several times myself.

Exam. Walsh: Several——

The Witness: Two; and the man that made the studies was in, I would say—I would have to count the dates here—eight times, I would say.

Exam. Walsh: Did you say some man made the studies?

The Witness: Under my supervision.

Mr. Fitzgerald: In his prepared testimony it is made entirely clear that these surveys were made by engineers under his supervision and answering to his direction.

Exam. Walsh: Any further cross examination of the witness?

By Mr. Miller:

Q. On these Exhibits 161 to 165, Mr. Ward, I don't understand why it is that one study one night started at 10, one started at 12 and one started at 8; can you explain that?

A. The unloading does not always start at the same time. However we made no attempt to start our studies at the start of unloading, or for that matter, finish at the end of unloading; so that this is not representative of the total cars unloaded that night.

Q. Well, what you did, then, was simply go down to the platform and compute a few hours work during the middle [fol. 1949] of a particular evening; is that correct?

A. Not necessarily the middle. In one case, for instance, 161 ends at 6:45 which is——

Q. 161 ends at 6:45.

Exam. Walsh: Ends at 7 o'clock, 7 in the morning, from 10:15 in the evening.

By Mr. Miller:

Q. Which is 161?

A. Exhibit 2.

Exam. Walsh: That shows that the unloading was performed on Sunday, April 29, 1951, starting at 10:15 in the *afternoon?*

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The Witness: Yes.

Exam. Walsh: And ending at 7 o'clock the following morning.

The Witness: Yes. I was looking at the finish of the last car which was 6:45.

By Mr. Miller:

Q. Is there any idle time in those Exhibits 160 to 164?

A. Only in the event that there was idle time during the actual unloading of the car, which did not occur.

Q. Are these exhibits intended to have some bearing upon the cost—total cost of performing unloading at these terminals?

A. It is supposed to indicate—it indicates the actual time taken by a six-man crew to unload a representative sample of cars at the two Terminals.

[fol. 1950] Q. Isn't it true that I could go down to the platform and make a study of this kind that would be just as competent as this?

A. The times—yes.

Q. Is there any special knowledge necessary to make a study of this kind? What you really did was just simply compute times men were working; isn't that so?

A. Yes, sir. That would be—if we are taking a time study which would require special knowledge, we would study each——

Q. But you didn't do that here?

A. No, sir. We took the over-all time.

Q. Why would a man of your ability so limit himself to doing something which I could do in attempting to make a cost study?

A. We did what we were requested to do, which was thought to be the fairest way of showing actual cost.

Q. If you were going to make a study to determine what it costs the Pennsylvania Railroad to perform this unloading, would it be a study of this kind?

A. Will you repeat that, sir?

Q. If you were employed by the Pennsylvania Railroad Company to determine for it what it costs to perform unloading at this produce terminal, would it be a study of this kind?

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Exam. Walsh: How often have you been in the Pennsylvania Terminal?

The Witness: I have been in several times myself.

Exam. Walsh: Several——

The Witness: Two; and the man that made the studies was in, I would say—I would have to count the dates here—eight times, I would say.

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[fol. 1950] Q. Isn't it true that I could go down to the platform and make a study of this kind that would be just as competent as this?

A. The times—yes.

Q. Is there any special knowledge necessary to make a study of this kind? What you really did was just simply compute times men were working; isn't that so?

A. Yes, sir. That would be—if we are taking a time study which would require special knowledge, we would study each——

Q. But you didn't do that here?

A. No, sir. We took the over-all time.

Q. Why would a man of your ability so limit himself to doing something which I could do in attempting to make a cost study?

A. We did what we were requested to do, which was thought to be the fairest way of showing actual cost.

Q. If you were going to make a study to determine what it costs the Pennsylvania Railroad to perform this unloading, would it be a study of this kind?

A. Will you repeat that, sir?

Q. If you were employed by the Pennsylvania Railroad Company to determine for it what it costs to perform unloading at this produce terminal, would it be a study of this kind?

A. Specifically, yes, but may I add this, that I think that you are saying, if the Pennsylvania Railroad asked us to study the operation and analyze the cost with a view, I think, toward making recommendations, would we study it in this way?

[fol. 1951] Q. No, indeed, that is not my question. My question is if you were asked to, on behalf of the Pennsylvania Railroad Company, to determine what the actual cost of its present unloading operation at the produce terminal in Philadelphia is, would you present this kind of a report? Would you make this kind of study?

A. For the direct labor, yes.

Q. No, I didn't say that.

A. Not for the total cost, no.

Q. Would you think that this kind of study had any reasonable bearing on the total cost?

A. I would say it did, yes.

Q. Would there be any way of determining total cost on the basis of this study?

A. There is in addition to this cost the factor of overhead, which we have made some comments on in the testimony.

Q. Do you believe that this represents a total labor cost per car?

A. It represents total direct unloading costs per car.

Q. For these particular cars?

A. Yes, sir.

Q. Would you be satisfied with a study of this kind in determining what it would cost as a general proposition to perform this unloading, considering only the direct labor cost?

A. Will you say what you mean by "general?"

[fol 1952] Q. It would seem to me perfectly absurd to think that I could determine what it would cost to perform an unloading operation, to go down and compute the time six men worked to unload a few cars on a few evenings in a week; isn't that correct?

A. No, sir, I don't think it is, because the unloading of a car is a relatively repetitive thing, the only variable being the type of material unloaded in the car, and I feel that a significant element of the unloading cost is the actual direct labor cost of unloading the car, and that the fairer

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thing to do was to determine what the actual direct labor cost for unloading was for a representative sample of the cars unloaded during a period.

Q. And then you would assume that because it costs much the same amount to unload any particular car within any particular hour period, that therefore if you would multiply that figure by the number of cars received, you would get a figure representing total labor cost; is that correct?

A. Total direct unloading cost, yes, sir.

Q. Now suppose in an instance of this kind the number of cars unloaded varied very widely, would that affect your conclusion as to labor cost?

A. The cars do vary apparently from one day to another, Sunday being a heavy day.

Q. And how would you propose that the Pennsylvania Railroad arrange its operations so that it is prepared to unload 20 cars one day, and to have no more than an exact [fol. 1953] number of men to unload five cars another day?

A. Well, the exhibits show that the variation in costs per car from a heavy day to a light day is not a great amount.

Q. On the basis of this study?

A. Yes. I mean there is a——

Q. Why don't you assume——

Mr. Fitzgerald: Why don't you let the witness complete the answer to the question?

Mr. Miller: He says he has answered.

The Witness: Yes.

By Mr. Miller:

Q. How would you go about arranging with your labor to provide a varying number of men from night to night?

A. Well, sir, it would seem that the Pennsylvania Railroad does a pretty good job of that right now, from observations on the platform.

Q. That is, the two evenings you were there?

A. Plus the eight or ten evenings that Mr. McCoy was there.

Q. Did it come to your attention in making this study that these laborers are now a part of the labor force which works both at the produce terminal and South Philadelphia station?

A. Yes.

Q. Do you know why those two forces are combined?

A. I have only the understanding that it is done from the [fol. 1954] standpoint of efficiency of operation.

Q. In what respect?

A. I understand that the men are brought in at 7 o'clock and the crews formed and any excess men are sent to the South Philadelphia freight terminal, leaving only enough to take care of the unloading operations at the Pennsylvania. I am talking only about Pennsylvania now.

Mr. Fitzgerald: Mr. Miller is counsel for the Pennsylvania Railroad.

The Witness: Yes.

By Mr. Miller:

Q. And that is all the information you have as to the reason for putting those two groups together?

A. Yes.

Mr. Miller: That is all.

Cross examination.

By Mr. Donadio:

Q. I have a couple of questions, Mr. Ward:

What is the number of this exhibit you filed with your testimony?

Mr. Fitzgerald: Nos. 160 to 169, Mr. Donadio.

Mr. Donadio: Is each page a separate exhibit?

Mr. Fitzgerald: Yes.

By Mr. Donadio:

Q. Do you represent that this Exhibit 160 series of exhibits, from 160 to 169, to the extent that it deals with the Baltimore & Ohio situation, is the cost of unloading fruits at the B. & O. Terminal or Reading B. & O. Terminal at Philadelphia?

[fol. 1955] A. Well, sir, Exhibits 161 and 165 represent studies taken in that terminal.

Exam. Walsh: And 166.

The Witness: That was the Baltimore & Ohio, sir.

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By Donadio:

Q. Do those figures represent the cost to the B. & O. Railroad for unloading fruits at Philadelphia?

A. It represents the direct labor unloading cost, using $1.57 as the hourly labor rate.

Q. Where did you get the $1.57 as applicable to B. & O. labor?

A. It was taken as a figure which was conservative in that it was at least as much as was being paid and probably more. We had no direct information as to the labor rate being paid; we showed the calculation on our exhibit so that it would be appreciated that we used a figure of $1.57.

Q. Well, it is $1.57. You don't know whether the B. & O. pays the labor, that particular labor, $1.57 or $1.95?

A. No, sir.

Q. Isn't Exhibit 161 and 166, 165 and 161 and 165, merely a statement showing the time that you observed, or your assistant observed, that it took to unload the car, or the particular cars shown in those exhibits, converted into man-hours, and multiplied by $1.57?

A. Yes.

Q. And isn't it a fact, Mr. Ward, that that has no more relation as to the actual expense, or cost, labor expense, [fol. 1956] direct labor expense to the B. & O. Railroad for unloading those—has no relation to what the actual cost is to the railroad for the direct labor for unloading those cars?

A. Well, sir, we had no way of knowing what the actual labor was billed at. However, the basic factor in the direct labor cost for an operation is, as you pointed out, the man-hours taken and the cost of that operation would be the man-hours taken times an hourly rate, which we took conservatively at $1.57, and showed it plainly as such.

Q. Well, even based on a man-hour basis, as you have set it up in this exhibit, it would disregard any standby time?

A. It would disregard any standby time, yes.

Q. And to that extent would not represent the actual cost for unloading that group of cars that the railroad incurred?

A. No, sir. It was intended to show the raw labor cost of directly unloading the cars, as a significant figure on which any excess manpower cost would be added. I be-

lieve we said in our testimony, which was put into the record, that that was what it showed, and that a factor would have to be added to that in here or in any outside terminal for overhead, which would consist of excess labor and supervision, and that sort of thing.

Q. Do you know, Mr. Ward, precisely how the B. & O. Railroad pays the labor for unloading those cars at the produce terminal there?

[fol. 1957] A. Mr. Talbott has been kind enough to discuss that with me to some extent. I know that they are paid a piece price of so much a car.

Mr. Fitzgerald: Do you know what that is?

The Witness: It is $12.90, I understand. That is the basic piece price to which is added certain allowances.

By Mr. Donadio:

Q. Are you familiar with the union contract that is in effect covering that situation?

A. No, I didn't see your union contract.

Q. You do know that it is on a per car basis for a certain number of men for each crew?

A. You say the contract is on a—you mean the piece price is on a per car basis?

Q. Yes.

A. By contract?

Q. And requires the employment of certain men, a certain number of men for each crew, unloading crew?

A. I gathered that from discussion with Mr. Talbott. It was my recollection that they did not always work with the standard number of men and sometimes more and sometimes less.

Q. But none of your figures reflect the true situation with respect to this unloading cost of the railroads?

Mr. Fitzgerald: I object to that question. What does counsel mean by "reflect the true situation?"

Mr. Donadio: I think he knows what I am talking about, [fol. 1958] the actual situation. I don't use it disparagingly.

The Witness: No.

Our figures do not attempt to indicate the actual wages

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paid platform labor, in accordance with your Exhibit No. 171, for instance.

By Mr. Donadio:

Q. On 161 you used a six man crew in getting your man hours?

A. I beg your pardon for hesitating. I want to be sure and check myself.

Yes.

Q. Isn't it a fact that as to a number of those cars, there were eight-men crews that actually did the work?

A. I do not know. I did not observe and Mr. McCoy did not observe during the time he was there any instances where there was more than six men. There were some times when there were less than six men, and those cars were omitted from our figures since we were talking about a standard unloading process.

Q. Now take this 161 here: Do I understand you to say that on all of the cars that you show on that exhibit that there were—that you observed no more than six men on those crews?

A. Yes, sir.

Q. You say that is true of all of them. Do you say that is true of car 47708?

My understanding is that as to that car there was an eight-man crew. On some of the others the same thing is true. [fol. 1959] You observed the loading of all of those cars shown on this exhibit?

A. Yes. We did not observe—may I add to that—we did not observe the whole operation of each car because we were observing in some cases three or four at once, but we did check in at some time during the unloading in order to look at the operation, and also get the starting and finishing time.

Q. Well, then, there could have been eight men crews that unloaded several of those cars without your noticing it?

A. We attempted to exclude any cars that did not have six men, sir, and to the best of our knowledge we did succeed in doing so.

Q. In other words, you disregarded all cars as to which there were more than six men?

A. We attempted to do so, yes.

Mr. Donadio: That is all.
Mr. Miller: May I ask one question?
Exam. Walsh: Yes.

Further cross examination.

By Mr. Miller:

Q. As I understand it, you feel I am perfectly competent to make a study of this kind?

A. Yes, I would say so, sir.

Q. Now, if I made a study of this kind and I had on the other hand someone of your special knowledge to compute the actual total cost, and this other fellow put men on the piers for an entire week and determined what the actual [fol. 1960] wages paid for all the men engaged in the unloading during that week were and further computed all the additional costs incurred by the railroad in connection with the unloading, and he came up with a different figure, would you think my figure or his was the more reliable?

A. I don't think I can answer that question by a yes or no answer. I would like to answer it by saying that you are not comparing the two equal things. One is an actual car-unloading time of representative cars, and the other is an over-all study of all cars, including all labor, plus additional cost, in addition to direct labor.

Mr. Miller: That is all.
Exam. Walsh: Redirect?

Redirect examination.

By Mr. Fitzgerald:

Q. Mr. Ward, I believe you stated in the prepared testimony that in your judgment this was a representative period of the year during which your examinations were made at these terminals; is that correct?

A. Yes.

Q. Now, you have stated here that Sunday night is a heavy night. On what nights of the week did you make your observations?

A. Observations were made on Wednesday, Thursday and Sunday.

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Q. In your judgment, are those representative nights to indicate the difference in volume on different nights of the week?

[fol. 1961] A. Yes.

Q. Was there any difference in your observation as to the amount of standby time or idle time on any of those nights, as compared to other nights?

A. I would say that the foreman attempted to control his standby time by the means which he has in his possession, so that he has attempted to confine the standby time to a minimum, whether it is Thursday or Sunday.

Q. Well, how effective did his attempt prove to be, according to your observation?

A. I think he did a pretty good job, from my observation, sir, based upon seeing no one but crew members unloading cars, and based upon the observation that six-man crews seemed to be pretty much the rule.

Q. Now, based on your statement that the period of your observation was a representative period, and that you have made observations on representative nights, do you care to comment any more fully on the point raised by the Examiner as to the possibility of cars being unloaded simultaneously all along both sides of the platform, or perhaps 15 cars?

I believe that was the remark?

A. Yes.

The studies taken on six occasions there indicated that there were not more than five cars unloaded at one time during those periods.

[fol. 1962] Q. What can you say as to the planning made by the foreman for the unloading operations and for the spotting of cars and that sort of thing, with particular reference to the possibility of cars being unloaded simultaneously all along the platform?

A. Supplementing the testimony in the written record here, or repeating it, I would say that the Pennsylvania foreman whose contract apparently permits it, and whose facilities for utilizing labor also permitted, does a good job of arranging cars so that they have about the same number of cars to unload all night.

Q. Is there anything in those factors which would change

your judgment as to the feasibility of the use of portable conveyors?

A. No.

Q. Now, I direct your attention, Mr. Ward, to page 6 of your testimony, in which you have stated that the hourly rate of $1.57, which was used by you in these exhibits was given to you by the Pennsylvania Railroad as their hourly rate. You were not present yesterday during the testimony of Mr. Heywood, I believe, is that correct?

A. No, that is correct.

Q. I may say that Mr. Heywood testified that the actual rate paid at the Pennsylvania Terminal varied from $1.40 and a fraction to $1.42 and a fraction. What effect in general would that fact have on your exhibits?

A. If those figures were substituted for the $1.57 in the [fol. 1963] exhibits, the consequent direct labor cost per car would therefore be lower.

Q. Merely for clarification, this study of yours does not purport to be an actual cost study of the Pennsylvania in any sense, since the Pennsylvania did not make available to you, as I understand it, any of its actual costs?

A. That is correct.

Q. Now, Mr. Ward, I don't expect you to understand the legal aspects of this case but I will preface my next question with the statement that there has been a distinction made in this entire proceeding between delivery as such and sorting and stacking.

Mr. Miller has asked you about the distribution of packages at the end of the assembly line. Would that in your judgment constitute unloading from the car, or some other or further operation, such as sorting or stacking?

A. Our study was based on the assumption that the unloading operation consisted of from the time the door was opened and the boxes started or the crates started moving out, to the time that they were finally stacked and sorted.

Q. Now, as a matter of fact, is it not true that there are employees specially detailed for the sorting and stacking, as distinguished from the unloading of the citrus fruit at "A" platform of the Pennsylvania Railroad?

A. Two men of each six man crew sort and stack, yes.

[fol. 1964] Mr. Fitzgerald: No further questions.

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Exam. Walsh: Any recross?
Mr. Wells: May I ask one question, Mr. Examiner?
Exam. Walsh: Mr. Wells.

Recross examination.

By Mr. Wells:

Q. Mr. Ward, if the process of unloading was terminated simply by placing the packages on the floor of the warehouse, or building, where it would be made available to the consignee, and without any service rendered in sorting and stacking but just putting them there as they came from the car, would that operate to reduce the amount of time consumed in each car, unloading and other operations, as you observed it?

A. When you say "the time," you mean the total time, the cost of unloading the car?

Q. Well, I am speaking now just of the time involved in the actual operation. In other words, if the same crew or members of the same crew did not consume any of the time in sorting and stacking the packages, according to lines, or letters, "A" and "B," etc., as Mr. Miller suggested, if none of that was done by the crew but the crew concentrated only on taking the packages physically from inside the car and putting them physically on to the platform, where they could be obtained, would that be a reduction in the amount of time required in the operation?

[fol. 1965] A. If six men confined themselves, assuming that it was physically possible for them to do it, to unloading from the car, and placing on the floor, without any sorting and stacking, they could unload a car faster than they do now. I am not sure it is physically possible for them to work in that way.

Q. Well, do I understand from your answer that a four-man crew could efficiently take the packages themselves from inside the car, and put them on the platform, if they didn't have regard to the order in which they were placed?

A. I would say so, sir.

Mr. Wells: That is all.

Recross examination.

By Mr. Donadio:

Q. Mr. Ward, this conveyor belt situation that you recommend, the saving that you suggest would come from the cutting down on the number of men; is that it?

A. Yes, sir.

Q. And if in the case of the B. & O. Railroad, that has an arrangement or contract with its employees covering this unloading on a per car basis, it is unable to change that method because of the union situation, then there would not be any saving?

A. No, sir.

Mr. Donadio: That is all.

Exam. Walsh: Now, I understood you in answer to Mr. Wells' question to say that the freight could be unloaded by four men if they eliminated the stacking and packing and [fol. 1966] sorting after it came out on to the platform. Am I correct?

The Witness: Yes, sir.

I would like to add one statement to that, if I may, that four men now—the four men, eliminating the sorting and stacking men, the four men now accomplish the job of bringing the boxes out of the car over to the place where they are sorted and stacked and there would be the additional—there is the additional job of pulling them off the truck and putting them on the ground, so to speak.

In saying that four men could do it, they would also, of course, have to unload the truck at the place where the crates were to be placed, or deposited.

That is the statement I would like to add.

Exam. Walsh: And would the place where the crates would be placed or deposited be the loaction where delivery would be made to the consignee?

The Witness: I don't know, sir. I mean it was a hypothetical question.

Exam. Walsh: I mean the end of the unloading, it was placed somewhere on the platform and the consignee comes in and takes the freight?

The Witness: Yes, sir.

Exam. Walsh: You are eliminating the sorting?

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The Witness: Yes.

Exam. Walsh: You unload all the traffic from five, ten [fol. 1967] or fifteen cars, out in that pile?

The Witness: Yes.

Exam. Walsh: And Consignee A, B, C, D and E come in for that freight?

The Witness: Yes.

Exam. Walsh: How are they going to get their freight out of that heap? Would you consider that good railroading? Dump it out there in a heap and let consignee A come in, and say, "Look for your freight. It is in that heap somewhere?"

The Witness: I assumed you were talking about a car loading or unloading operation with one consignee.

Exam. Walsh: Don't you have several consignees?

The Witness: I think you do, yes, sir, as a rule.

Exam. Walsh: At an ordinary freight station?

The Witness: I think you do, as a rule.

Exam. Walsh: Do you know of any freight station that is a one-man operation?

The Witness: No, sir, I was speaking about one car, sir, one consignee per car.

Exam. Walsh: All right.

Any further questions?

Mr. Wells: Mr. Examiner, in order to clarify the question that I asked, it seems to me there may be some confusion about the intent that I had. I was thinking about the Allowance and Stacking case, which was referred to in the brief.

[fol. 1968] Mr. Miller: Allowance for Stacking.

Mr. Wells: I would like to ask Mr. Ward this additional question.

Recross examination.

By Mr. Wells:

Q. From what you observed in the actual operations, would the four-man crew be able to unload and to place the packages from a particular car in a separate place on the platform, without the sorting and stacking by grades and sizes and so forth, so that the pile, if you want to call it that,

or the packages from each car, would be still separate and distinct on the platform from the location of the packages from a different car?

A. Yes, I would say it would be possible.

I would like to add that it might take slightly longer for four men to do that than it would for six men to do what they are doing now.

Mr. LaRoe: You could do it with one man, couldn't you, if you took time enough?

The Witness: If you took time enough, yes, sir.

Exam. Walsh: Any further questions of this witness?

(No response.)

Exam. Walsh: You are excused, Mr. Ward. Thank you.

(Witness excused.)

Exam. Walsh: The next witness, please.

Mr. Mattson: Mr. Examiner, I would like to call Mr. Pease.

[fol. 1969] Exam. Walsh: Has Mr. Pease testified in this proceeding?

Mr. Mattson: Yes.

Y. L. Pease previously sworn, further testified as follows:

Direct examination.

By Mr. Mattson:

Q. You are the same Mr. Pease who testified at the previous hearings in this proceeding?

A. That is right.

Q. What is your present title, Mr. Pease? I understand you have had a change since the previous hearing.

A. Assistant Chief, Traffic Management Division, Transportation and Warehousing Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., South Building.

Q. Mr. Pease, yesterday Witness Clark, Train Master for the Pennsylvania Railroad, at Philadelphia, testified as to ownership of refrigerator cars, and he stated that

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several railroads which he named have placed their refrigerator cars upon a mileage basis.

He names the Atchison, Topeka & Santa Fe, Bangor & Aroostook, Boston & Maine, Delaware, Lackawanna and Western, Denver & Rio Grande Western, Illinois Central, Louisiana & Arkansas, Northern Pacific—those are all American railroads, are they not?

A. Yes, sir.

[fol. 1970] Q. In addition he names the Canadian National, Canadian Pacific, and the Grand Trunk Western.

Are those American railroads?

A. Those are commonly known as Canadian railroads.

Q. Then he states that practically all of the railroads-controlled refrigerator cars in the United States are owned by the railroads shown in the foregoing list.

In that connection, do you have, or do you know the relative numbers of refrigerator cars owned by those railroads?

A. I have a tabulation for three of them as taken from the Official Equipment Register.

The Illinois Central owns 1,017; the Atchison, Topeka & Santa Fe owns 14,833 refrigerators commonly referred to as S. F. R. D.'s; Northern Pacific owns 2,277 refrigerators.

Q. And as to the other railroads referred to by Witness Clark, do they own substantial numbers of refrigerator cars?

A. I don't think they could be called substantial numbers. The Bangor & Aroostook, I believe, is in the process of building up a fleet of refrigerator cars. I don't think their ownership is much over 300.

The Boston & Maine I was not aware owned any.

Delaware, Lackawanna & Western I believe is negligible.

Denver & Rio Grande Western cars are part operated—I believe operated as a part of the American Refrigerator Transit Company fleet.

[fol. 1971] Louisiana & Arkansas Railroad, I didn't know they owned any.

Q. Now, reference was also made by Witness Clark to cars owned by the so-called car lines. Do you have information in that connection which you can give to the Commission?

Mr. Miller: What kind of information? Let's make it a question?

Mr. Mattson: All right.

By Mr. Mattson:

Q. Do you know the numbers of cars owned by these car lines at the present time, or in 1950?

A. As reported in their annual reports to the Commission for 1950, the American Refrigerator Transit Company owned 9,928 cars at the end of the year;

Burlington Refrigerator Express, 1730; Fruit Growers Express Co., 12,674; Merchants Dispatch Transportation Corporation, 9,979; Pacific Fruit Express Co., 37,557; Estern Fruit Express Co., 5,582; or a total fleet of those six so-called private car lines of 77,518 cars.

Q. As compared to roughly 18,000 cars directly owned by the railroads which you have named?

A. By those three railroads I named. They own 18,127.

Q. Now, as to these private car lines, are they in turn owned by the railroads of the United States?

[fols. 1972-1976] A. Yes, sir.

Mr. Mattson: That is all. Thank you.

Exam. Walsh: Cross examine.

Mr. Wells: May I ask a question for clarification?

Exam. Walsh: All right.

Mr. Wells: Mr. Pease, in the numbers that you give of cars, both of direct railroad ownership and indirect railroad ownership through the refrigerated car lines, did you include only the freight refrigerated cars or do those also include express refrigerated cars?

The Witness: Freight refrigerated cars only.

Mr. Wells: Thank you.

Mr. Mattson: That is all on direct.

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[fol. 1977] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31106

FLORIDA CITRUS COMMISSION, ET ALS., COMPLAINANTS

vs.

THE BALTIMORE & OHIO R. R. CO., ET ALS., DEFENDANTS

MOTION TO DISMISS COMPLAINT—Filed October 22, 1952

Defendants hereby move to dismiss the complaint herein on the following grounds:

1. All of the complainants herein were parties to, and active participants in, I. & S. Docket No. 5500.

2. The complaint herein attacks the lawfulness of unloading charges on fresh fruits and vegetables at certain Philadelphia, Pa. stations on the sole ground that (paragraph 11) "said unloading charges are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act."

3. In I. & S. Docket No. 5500, the entire Commission on October 4, 1948 made a report and order containing this finding (272 I. C. C. 648, 663):

> "We find that the schedules under investigation are just and reasonable."

The schedules so found to be just and reasonable named the unloading charges on fresh fruits and vegetables at Philadelphia which were originally filed by the carriers to become [fol. 1978] effective June 1, 1947. The unloading charges which became effective originally were substantially higher than the unloading charges now in effect.

4. After rehearing and further hearing in I. & S. Docket No. 5500, the entire Commission on May 7, 1952 (286 I.C.C. 119) made a report and order directing tne cancellation of the unloading charges which originally became effective without prejudice to the establishment of lower unloading charges specified by the Commission. These lower unloading charges, now alleged by the complaint herein to be unjust and unreasonable, became effective on July 3, 1952 and are now in effect.

5. The Commission's report dated May 7, 1952, contains

this sentence (286 I.C.C. 119, 142): "The ultimate finding in the prior report is modified accordingly." Said ultimate finding in the prior report was (272 I. C. C. 648, 663): "We find that the schedules under investigation are just and reasonable." In other words, the entire Commission on May 7, 1952, made a specific finding that the lower unloading charges, now alleged by the complaint herein to be unjust and unreasonable, are "just and reasonable."

6. The complaint herein does not allege any new facts, or changed conditions since May 7, 1952, to support its allegation that the existing unloading charges are unjust and unreasonable. Such allegation is in derogation of the entire Commission's finding of May 7, 1952.

7. The contention in the complaint herein was fully considered by the entire Commission, and disposed of, in I. & S. Docket No. 5500. Nothing new, in the way of fact, law or argument, is stated in the complaint. Complainants' allegation that the unloading charges should be cancelled be- [fol. 1979] cause the unloading service is in the line-haul rates was disposed of by the entire Commission under "General Discussion and Conclusions" at pages 139-141 of the decision dated May 7, 1952 in I. & S. Docket No. 5500.

8. Since the issue raised by the complaint herein was in all respects specifically ruled upon by the entire Commission in I. & S. Docket No. 5500, and since all the complainants in the complaint herein were parties to I. & S. Docket No. 5500, and since the complaint herein alleges nothing that was not fully considered and disposed of by the entire Commission in I. & S. Docket No. 5500, it would be contrary to the public interest for the Commission to waste its resources in hearing the complaint herein, and it would be vexatious and burdensome to subject defendants herein to further hearing and argument.

9. In I. & S. Docket No. 5500, there were three separate and lengthy hearings and three oral arguments with proposed reports, exceptions and numerous briefs. All of the complainants herein had their full day before the Commission.

10. If complainants felt unduly aggrieved by the decision dated May 7, 1952 of the entire Commission in I. & S. Docket No. 5500, they could have, within sixty days thereafter, petitioned the Commission for reconsideration under

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Rule 101 of the Commission's General Rules of Practice. Complainants herein should not be permitted to violate Rule 101(e) by the simple expedient of calling their filed document a "Complaint."

11. The dispute raised by the complaint herein has already been heard and disposed of in I. & S. Docket No. 5500. No useful purpose would be served by burdening the Commission and defendants with further hearings and argument.

[fol. 1980] 12. Precedent in all respects supports the granting of this Motion. For example, in Docket No. 30782 (*Indianapolis Machinery and Supply Company, Inc. et al.* v. *Atchison, Topeka & Santa Fe Railway Company, et al*), the Commission granted defendants' Motion to Dismiss the complaint therein, saying:

> "Upon consideration of the complaint in the above-entitled proceeding, defendants' motion to dismiss it without hearing, and complainants' reply thereto; and it appearing that the complaint is made by the same complainants with respect to the same commodities and origin and destination points and presents substantially the same issues that were considered and disposed of by the Commission in No. 29973, *Indianapolis Mach. & Supply Co., Inc.* v. *A. T. & S. F. Ry. Co.*, 276 I.C.C. 252, and that the Commission, on January 9, 1950, denied complainants' petition therein for rehearing and further consideration; and it further appearing from the complaint that the circumstances and conditions under which the rates apply and the shipments are made, have not materially changed since substantially the same issues were presented and decided in the prior proceeding and that no reasonable ground appears for investigation of this further complaint.
>
> "*It is ordered*, That said motion of defendants be, and it is hereby, sustained.
>
> "*It is further ordered*, That the complaint in this proceeding be, and it is hereby, dismissed."

13. Defendants respectfully request that the time for filing answers to the complaint herein be indefinitely postponed pending consideration and disposition of this Motion.

Wherefore, defendants hereby respectfully move that the complaint herein be dismissed.

[fols. 1981-1982] *Duly sworn to by E. A. Hodkinson jurat omitted in printing.*

[fol. 1983] BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION BY THE SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE—Filed November 7, 1952

Comes now your petitioner, the Secretary of Agriculture of the United States, and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to the said proceeding, and for grounds of the proposed intervention says:

I

That this petition is filed pursuant to section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622).

II

That the complaint in this proceeding attacks as unlawful certain charges relating to the transportation of farm products and affecting the public interest.

[fol. 1984]

III

That the charges attacked by the complaint are unjust and unreasonable in violation of section 1(5) of the Interstate Commerce Act.

IV

That your petitioner hereby adopts and affirmatively supports the allegations of the complaint, and states further that this petition does not unduly broaden the issues in this proceeding.

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Wherefore, the Secretary of Agriculture of the United States prays leave to intervene in and be treated as a party to this proceeding with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, J. L. Pease, Assistant Chief, Traffic Management Division, Transportation and Warehousing Branch Production and Marketing Administration. (S.) Charles W. Bucy, Associate Solicitor. (S.) Walter D. Matson, Attorney. United States Department of Agriculture, Washington 25, D. C.

Dated November 7, 1952.

[fols. 1985-1986] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 31106

FLORIDA CITRUS COMMISSION, et al.

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, et al.

ORDER PERMITTING SECRETARY OF AGRICULTURE TO INTERVENE—November 12, 1952

In the Matter of Petition for Leave to Intervene.

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of the Secretary of Agriculture of the United States.

It is ordered, That the said the Secretary of Agriculture of the United States be, and he is hereby, permitted to inter-

vene and be treated as a party to this proceeding, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervener to introduce evidence which will unduly broaden the issues raised in the complaint.

It is further ordered, That a copy of the intervening petition be served upon complainants and defendants; and that a copy of this order be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 12th day of November, A. D., 1952.

By the Commission, Commissioner Mahaffie, George W. Laird, George W. Laird, Acting Secretary. (Seal.)

[fol. 1987] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31105

FLORIDA CITRUS COMMISSION, et als., Complainants

vs.

THE BALTIMORE & OHIO R. R. Co., et als., Defendants

MOTION TO DISMISS COMPLAINT—Filed October 22, 1952

Defendants hereby move to dismiss the complaint herein on the following grounds:

1. All of the complainants herein were parties to, and active participants in, I. & S. Docket No. 5500.

2. The complaint herein attacks the lawfulness of unloading charges on fresh fruits and vegetables at certain New York pier stations on the sole ground that (paragraph 10) "said unloading charges are unjust and unreasonable in violation of Section 1 of the Act."

3. In I. & S. Docket No. 5500, the entire Commission on October 4, 1948 made a report and order containing this finding (272 I. C. C. 648, 663):

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"We find that the schedules under investigation are just and reasonable."

The schedules so found to be just and reasonable named the unloading charges on fresh fruits and vegetables at [fol. 1988] New York which were originally filed by the carriers to become effective June 1, 1947. The unloading charges which became effective originally were substantially higher than the unloading charges now in effect.

4. After rehearing and further hearing in I. & S. Docket No. 5500, the entire Commission on May 7, 1952 (286 I.C.C. 119) made a report and order directing the cancellation of the unloading charges which originally became effective without prejudice to the establishment of lower unloading charges specified by the Commission. These lower unloading charges, now alleged by the complaint herein to be unjust and unreasonable, became effective on July 3, 1952 and are now in effect.

5. The Commission's report dated May 7, 1952, contains this sentence (286 I.C.C. 119, 142): "The ultimate finding in the prior report is modified accordingly." Said ultimate finding in the prior report was (272 I.C.C. 648, 663): "We find that the schedules under investigation are just and reasonable." In other words, the entire Commission on May 7, 1952, made a specific finding that the lower unloading charges, now alleged by the complaint herein to be unjust and unreasonable, are "just and reasonable."

6. The complaint herein does not allege any new facts, or changed conditions since May 7, 1952, to support its allegation that the existing unloading charges are unjust and unreasonable. Such allegation is in derogation of the entire Commission's finding of May 7, 1952.

7. The contention in the complaint herein was fully considered by the entire Commission, and disposed of, in I. & S. Docket No. 5500. Nothing new, in the way of fact, law or argument, is stated in the complaint. Complainants' allegation that the unloading charges should be cancelled [fol. 1989] because the unloading service is in the line-haul rates was disposed of by the entire Commission under "General Discussion and Conclusions" at pages 139-141 of the decision dated May 7, 1952 in I. & S. Docket No. 5500.

8. Since the issue raised by the complaint herein was in

all respects specifically ruled upon by the entire Commission in I. & S. Docket No. 5500, and since all the complainants in the complaint herein were parties to I. & S. Docket No. 5500, and since the complaint herein alleges nothing that was not fully considered and disposed of by the entire Commission in I. & S. Docket No. 5500, it would be contrary to the public interest for the Commission to waste its resources in hearing the complaint herein, and it would be vexatious and burdensome to subject defendants herein to further hearing and argument.

9. In I. & S. Docket No. 5500, there were three separate and lengthy hearings and three oral arguments with proposed reports, exceptions and numerous briefs. All of the complainants herein had their full day before the Commission.

10. If complainants felt unduly aggrieved by the decision dated May 7, 1952 of the entire Commission in I. & S. Docket No. 5500, they could have, within sixty days thereafter, petitioned the Commission for reconsideration under Rule 101 of the Commission's General Rules of Practice. Complainants herein should not be permitted to violate Rule 101(e) by the simple expedient of calling their filed document a "Complaint."

11. The dispute raised by the complaint herein has already been heard and disposed of in I. & S. Docket No. 5500. No useful purpose would be served by burdening the Commission and defendants with further hearings and argument.

[fol. 1990] 12. Precedent in all respects, supports the granting of this Motion. For example, in Docket No. 30782 (*Indianapolis Machinery and Supply Company, Inc. et al* v. *Atchison, Topeka & Santa Fe Railway Company, et al.*), the Commission granted defendants' Motion to Dismiss the complaint therein, saying:

> "Upon consideration of the complaint in the above-entitled proceeding, defendants' motion to dismiss it without hearing, and complainants' reply thereto; and it appearing that the complaint is made by the same complainants with respect to the same commodities and origin and destination points and presents substantially the same issues that were considered and disposed of by the Commission in No. 29973, *Indianapolis Mach.*

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& Supply Co., Inc. v. *A. T. & S. F. Ry. Co.*, 276 I.C.C. 252, and that the Commission, on January 9, 1950, denied complainants' petition therein for rehearing and further consideration; and it further appearing from the complaint that the circumstances and conditions under which the rates apply and the shipments are made, have not materially changed since substantially the same issues were presented and decided in the prior proceeding and that no reasonable ground appears for investigation of this further complaint.

"*It is ordered,* That said motion of defendants be, and it is hereby, sustained.

"*It is further ordered,* That the complaint in this proceeding be, and it is hereby, dismissed."

13. Defendants respectfully request that the time for filing answers to the complaint herein be indefinitely postponed pending consideration and disposition of this Motion.

Wherefore, defendants hereby respectfully move that the complaint herein be dismissed.

[fols. 1991-1992] *Duly sworn to by E. A. Hodkinson jurat omitted in printing.*

[fol. 1993] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 31105

FLORIDA CITRUS COMMISSION, et al.

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, et al.

PETITION BY THE SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE—Filed November 7, 1952

Comes now your petitioner, the Secretary of Agriculture of the United States, and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become

a party to the said proceeding, and for grounds of the proposed intervention says:

I

That this petition is filed pursuant to section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agriculture Marketing Act of 1946 (7 U.S.C. 1622).

II

That the complaint in this proceeding attacks as unlawful certain charges relating to the transportation of farm products and affecting the public interest.

[fol. 1994] III

That the charges attacked by the complaint are unjust and unreasonable in violation of section 1(5) of the Interstate Commerce Act.

IV

That your petitioner hereby adopts and affirmatively supports the allegations of the complaint, and states further that this petition does not unduly broaden the issues in this proceeding.

Wherefore, the Secretary of Agriculture of the United States prays leave to intervene in and be treated as a party to this proceeding with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, J. L. Pease, Assistant Chief Traffic Management Division, Transportation and Warehousing Branch Production and Marketing Administration. (S.) Charles W. Bucy, Associate Solicitor. (S.) Walter D. Matson, Attorney, United States Department of Agriculture, Washington 25, D. C.

Dated November 7, 1952.

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[fols. 1995-2011] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 31105

[Title omitted]

ORDER PERMITTING THE SECRETARY OF AGRICULTURE AND THE CITY OF NEW YORK TO INTERVENE—November 12, 1952

In the Matter of the Petitions for Leave to Intervene.

Present: Charles D. Mahaffie, Commissioner, to whom the above entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and petitions filed on behalf of the Secretary of Agriculture of the United States and The City of New York.

It is ordered, That the said the Secretary of Agriculture of the United States and The City of New York be, and they are hereby, permitted to intervene and be treated as parties to this proceeding, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow interveners to introduce evidence which will unduly broaden the issues raised in the complaint.

It is further ordered, That a copy of the intervening petitions be served upon complainants and defendants; and that a copy of this order be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 12th day of November A. D., 1952.

By the Commission, Commissioner Mahaffie, George W. Laird, Acting Secretary. (Seal.)

[fol. 2012] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1953

[Title omitted]

STIPULATION—Filed February 25, 1954

In lieu of the Designation of Parts of Record to be Printed heretofore filed by counsel for the Secretary of Agriculture of the United States in No. 480 and the Appellants in No. 481, the Statement Designating Additional Parts of Record to be Printed filed by counsel for the Interstate [fol. 2013] Commerce Commission, and the stipulation of the parties as to the record and the parts thereof to be printed dated December 18, 1953, for the purpose of reducing the cost of printing the record herein it is stipulated and agreed that the entire record in these cases shall be printed with the following parts thereof to be omitted, it being understood and agreed that the entire record including the parts thereof listed below for omission from the printed record shall stand as part of the record and any party and the Court may refer to the unprinted parts of the record with the same force and effect as if they had been printed in full in the transcript of record:

1. Certified copies of the exhibits received in evidence before the Interstate Commerce Commission in Docket No. I&S 5500, *Unloading Charges on Fruits and Vegetables at New York and Philadelphia.*

2. The oral arguments before the Commission running from pages 720-912 and pages 1482-1612 of the stenographers' minutes of proceedings before the Interstate Commerce Commission in Docket No. I&S 5500.

3. Praecipes.

4. All Certificates of Service.

5. All Certificates of the Secretary of the Interstate Commerce Commission certifying to the authenticity of the record.

6. Complaints before the Interstate Commerce Commission in Docket Nos. 31105 and 31106.

Replies to motions to dismiss complaints in Docket Nos. 31105 and 31106.

Order of Interstate Commerce Commission in Docket Nos. 31105 and 31106.

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7. Petition for Reconsideration on behalf of California Citrus League dated December 6, 1948.

[fol. 2014] Petition for Reopening and Reconsideration by International Apple Association, National League of Wholesale Fresh Fruit and Vegetable Distributors and United Fresh Fruit and Vegetable Association, dated December 6, 1948.

Petition for Reconsideration on behalf of California Grape and Tree Fruit Association and California Growers and Shippers Protective League, dated December 13, 1948.

Petition for Reopening and Reconsideration on behalf of New York Carload Receivers Committee, dated December 6, 1948.

8. City of New York Reply to Exceptions of Respondents, dated June 15, 1950.

Reply of Southeastern Association of Railroad Utilities Commissioners to Exceptions, dated June 30, 1950.

Industry Committee for Improvement of Washington Market Reply to Exceptions, dated June 30, 1950.

California Grape and Tree Fruit League Reply to Exceptions, dated June 30, 1950.

Philadelphia Terminals Marketing Association Reply to Exceptions, dated June 30, 1950.

Auction Receivers of Philadelphia, Reply to Exceptions, dated June 27, 1950.

9. All of Appendix F (pps. 99, et seq.) to Exceptions of Respondents to the Proposed Report of Examiner M. J. Walsh, dated September 11, 1951. This is a copy of Commission decision, 272 I. C. C., pps. 648 through 664, which is being printed as Appendix A of complaint in the District Court.

Reply of City of New York to Exceptions of Respondents, dated October 15, 1951.

Reply to Exceptions of National League of Wholesale Fresh Fruit and Vegetable Distributors, dated October 15, 1951.

[fol. 2015] Reply to Respondents' Exceptions on behalf of Philadelphia Terminals Marketing Association and Auction Receivers of Philadelphia, dated October 18, 1951.

Reply of California Citrus League to Respondents' Exceptions, dated October 18, 1951.

Reply to Respondents' Exceptions on behalf of Industry Committee for the Improvement of Washington Market, dated October 18, 1951.

10. Parts of transcript of stenographer's minutes before the Interstate Commerce Commission, Docket No. I&S No. 5500, as follows (all figures are inclusive):

Pp. 1-4. P. 5, line 5, p. 10, line 17. P. 165, last six lines. Pp. 166-167a. P. 369, last six lines. Pp. 370-371-A. P. 523, last 14 lines. Pp. 524-530-B. P. 577, line 1—p. 579, line 10. P. 713, last 16 lines—p. 718, first 16 lines. Pp. 720-912. P. 976, last 11 lines. Pp. 977-891, first 3 lines. P. 981, from line 4, beginning "(Protestant's Exhibits * * *)"—p. 982, line 5. Pp. 1070-1076, first 11 lines. P. 1076, last 15 lines—p. 1098. [fol. 2016] Pp. 1099-1112. Pp. 1113-1114. P. 1115, under heading "Proceedings," lines 1-16. Pp. 1181-1186. Pp. 1187-1197. Pp. 1198-1208. Pp. 1225-1234. P. 1314, last 7 lines, beginning "(Respondents' Exhibits * * *)". Pp. 1315-1316. Pp. 1476-1481. Pp. 1482-1612. P. 1613—lines 1-8. P. 1615—lines 2-18. P. 1741—lines 2-8. P. 1742, lines 1-2. P. 1875, lines 2-11. Pp. 1876-1887. P. 1888, under heading "Proceedings"—lines 1-8. P. 1972, last 13 lines. Pp. 1973-2117.

11. Report of Commission dated October 4, 1948.

12. Petition of The Port of New York Authority for extension of time within which to submit petition for reconsideration.

13. Report on Rehearing Proposed by Russell M. Brown M. J. Walsh, Examiners.

[fols. 2017-2018] 14. Stenographer's Minutes of PreHearing Conference, dated November 8, 1950 (pp. 1-65).

15. Second Report on Further Hearing Proposed by M. J. Walsh, Examiner.

16. Note—Fifty Copies of complaint of Florida Citrus Commission, et al., in the United States District Court will be furnished by the appellants except for Exhibits A and B to the complaint. Therefore, it will be necessary to print only Exhibits A and B of this complaint.

The Secretary of Agriculture of the United States, appellant in No. 480, and Florida Citrus Commission, et al.,

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appellants in No. 481, have heretofore adopted, and hereby adopt, for their statements of points upon which they intend to rely in their appeals to this Court the points contained in their respective assignments of errors filed herein.

Neil Brooks, Associate Solicitor, U. S. Department of Agriculture, Attorney for the Secretary of Agriculture, Appellant; Arthur L. Winn, Jr. Attorney for Florida Citrus Commission, et al., Appellants; Edward M. Reidy, Chief Counsel, Interstate Commerce Commission, Appellee; Hugh B. Cox, Counsel for Intervening Railroads, Appellees.

February 25, 1954.

[fol. 2019] [File endorsement omitted]

[fol. 2020] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

Nos. 480 & 481

SECRETARY OF AGRICULTURE OF THE UNITED STATES, Appellant,

vs.

UNITED STATES OF AMERICA et al.; and

FLORIDA CITRUS COMMISSION, GROWERS AND SHIPPERS LEAGUE OF FLORIDA et al., Appellants,

vs.

UNITED STATES OF AMERICA et al.

ORDER NOTING PROBABLE JURISDICTION—Filed February 1, 1954

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted and the cases are consolidated for argument.